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# White paper

# on the Workers' Compensation Act

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# on the Workers' Compensation Act

Ontario

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Ministry of Labour

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This White Paper sets out the Government's proposals for change in the Province's workers' compensation system.

In January, 1980, I requested Professor Paul Weiler to undertake a comprehensive review of the existing Workmen's Compensation Act and its administration. In November, 1980, he delivered to me a report entitled "Re-shaping Workers' Compensation for Ontario" in which major revisions to the benefit structure and adjudicative system were recommended.

Since 1913, the year of Mr. Justice Meredith's landmark report proposing a compulsory industry-financed system of collective responsibility for work-related injuries, Ontario has been in the forefront in this field. My goal in initiating a major review last year was to ensure that our system is adequate to the needs of the 1980s.

When I received Professor Weiler's report last November, I caused it to be circulated widely to labour and management groups and to other interested parties for comments and suggestions. I have had a number of responses and have had several meetings with interested parties to discuss the proposals. As might be expected, there are some differences of view on the substance of the proposals; in the main, however, there is a broad consensus in favour of the major thrust of the proposed revisions.

The Government is persuaded that reforms along the lines recommended in the Weiler Report are required. However, before introducing a Bill in the Legislature, it has been decided to circulate this White Paper setting out twenty-one substantive revisions which the Government believes may be appropriate and illustrating how these revisions would apply to the day-to-day administration of claims.

Translating the twenty-one proposals into workable legislative language is, of course, essential. Attached to the White Paper is the proposed Statute, giving effect to the twenty-one proposals and re-organizing the structure and modernizing the language of the existing Act, which has evolved in piecemeal fashion over many decades.

As readers will see, the proposed Bill, like its predecessor, is unavoidably long and complex. Moreover, many of the new proposals — entitlement related to wage loss, incorporation of an age factor in determining the amount of some awards, the protection of retirement income, to name only three — pose particular difficulties and have important ramifications for the proposed new system. Close collaboration among the administrators, actuaries and legal draftsmen is, therefore, essential to ensure that the intent of the recommendations is sound and is properly carried out.

A concern expressed by some relates to the costs of the new system. Included in the Paper are comparative cost estimates (together with a narrative explanation of the assumptions made and methodology used in arriving at these estimates) prepared by the Board's Actuary and verified by an independent actuarial consultant.

Finally, the Paper comments on the application of the proposed legislation to workers disabled and receiving benefits under the existing Statute.

I should mention that in the second phase of this inquiry, which is about to commence, Professor Weiler will be taking a longer-range view of the compensation problems associated with industrial disease, the advantages and disadvantages of moving to a universal plan for guaranteeing against loss of income from personal injuries whether work-related or not, existing administrative and functional relationships between the Board and the Ministry of Labour and other related matters. The immediate justification for the proposals contained in the draft Bill attached are not dependent upon further enquiry into those related matters.

The present intention of the Government is to proceed with enactment of the new legislation, along the lines set out in the draft Bill as soon as possible, unless I receive strongly-supported reasons for modifications.

I would request that written comments be received no later than August 31, 1981, in order to be considered prior to the introduction of any legislation. Comments should be addressed to:

The Workers' Compensation Revision Committee,
Ministry of Labour,
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Robert G. Elgie, M.D.
Minister

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## SUMMARY OF MAJOR PROPOSALS

1. THE CEILING FOR THE CALCULATION OF COVERED EARNINGS (CURRENTLY $18,500) SHOULD BE INCREASED TO 250% OF THE AVERAGE INDUSTRIAL WAGE IN ONTARIO (APPROXIMATELY $40,000 IN 1980).

2. TEMPORARY COMPENSATION BENEFITS SHOULD BE BASED ON 90% OF PRE-INJURY NET DISPOSABLE EARNINGS (INSTEAD OF THE PRESENT BASE OF 75% OF GROSS EARNINGS).

3. A DUAL AWARD SYSTEM SHOULD BE INSTITUTED FOR PERMANENT DISABILITY: A LUMP SUM TO BE PAID ACCORDING TO THE DEGREE OF IMPAIRMENT, AND CONTINUING PERIODIC PAYMENTS TO BE MADE ONLY WHEN WAGES ARE ACTUALLY LOST.

4. "STACKING" OF BENEFITS SHOULD BE REDUCED BY DEDUCTING C.P.P. DISABILITY AND SURVIVOR BENEFITS FROM W.C.B. BENEFITS IN CASES OF PERMANENT DISABILITY AND SURVIVOR AWARDS.

5. WAGE LOSS BENEFITS FOR PERMANENT DISABILITY SHOULD CEASE WHEN THE WORKER ATTAINS THE AGE OF 65, TO BE REPLACED WITH RETIREMENT INCOME LOSS BENEFITS.

6. THE EMPLOYER SHOULD MAINTAIN THE WORKER'S EMPLOYMENT BENEFITS (INCLUDING PRIVATE PENSIONS) WHILE THE WORKER IS ON TOTAL DISABILITY BENEFITS, FOR A MAXIMUM OF ONE YEAR.

7. IN NEW FATAL ACCIDENT CASES, SURVIVOR AND DEPENDENT AWARDS SHOULD BE DECIDED ACCORDING TO A NEW FORMULA: ANNUALLY ADJUSTED PENSIONS CALCULATED ON THE BASIS OF THE DECEASED'S PRE-ACCIDENT EARNINGS (RATHER THAN FLAT RATES, AS CURRENTLY), THE PERCENT OF SUCH AWARDS TO VARY WITH THE AGE OF THE SPOUSE; A CAPITAL SUM EQUAL TO 250% OF THE AVERAGE INDUSTRIAL WAGE (APPROXIMATELY $40,000 IN 1980), ADJUSTED FOR SPOUSE'S AGE, AWARDED TO THE SPOUSE; SUCH CAPITAL SUM TO BE THE SOLE COMPENSATION OF SPOUSES UNDER 40 WITH NO DEPENDANTS.

8. COMPENSATION BENEFIT AWARDS UNDER THE NEW ACT SHOULD BE REVIEWED ANNUALLY BY CABINET FOR POSSIBLE ADJUSTMENTS FOR INFLATION, SUCH REVIEW TO FOLLOW A PUBLIC REPORT BY THE WORKERS' COMPENSATION BOARD AND ANY SUCH ADJUSTMENTS TO BE MADE BY REGULATION.

9. THE ONE-DAY WAITING PERIOD FOR BENEFITS SHOULD BE ELIMINATED, AND THE EMPLOYER SHOULD BE REQUIRED TO PAY THE INJURED EMPLOYEE HIS NORMAL WAGES FOR THE DAY ON WHICH HIS INJURY OCCURS.

10. W.C.B. COVERAGE SHOULD BE EXTENDED TO DOMESTICS.

11. AN INDEPENDENT, TRIPARTITE APPEALS TRIBUNAL SHOULD BE ESTABLISHED.

12. A NEW SYSTEM OF INDEPENDENT MEDICAL REVIEW PANELS SHOULD BE ESTABLISHED.

13. A NEW CORPORATE BOARD WITH OUTSIDE DIRECTORS SHOULD BE ESTABLISHED.

14. THE OFFICE OF THE WORKER ADVISER SHOULD BE EXPANDED AND MADE INDEPENDENT OF THE BOARD.

15. A NEW OFFICE OF THE EMPLOYER ADVISER SHOULD BE ESTABLISHED, TO BE INDEPENDENT OF THE BOARD.

16. FULL ACCESS TO CLAIM RECORDS SHOULD BE MADE AVAILABLE TO THE EMPLOYEE AND HIS REPRESENTATIVE; THE EMPLOYER AND HIS REPRESENTATIVE WILL BE GRANTED ACCESS TO THOSE RECORDS DEEMED RELEVANT BY THE BOARD IN CASES WHERE THE EMPLOYER CONTESTS EITHER AN APPLICATION FOR COMPENSATION OR HIS ACCOUNTABILITY FOR COSTS.

17. A MANDATORY EXPERIENCE-RATING PLAN FOR INDIVIDUAL EMPLOYERS SHOULD BE INSTITUTED.

18. A WORKER SHOULD ACCEPT AVAILABLE WORK DEEMED SUITABLE BY THE BOARD, OR LOSE EQUIVALENT COMPENSATION.

19. A WORKER SHOULD HAVE THE RIGHT TO RETURN TO HIS OLD JOB, IF HE IS ABLE; AND IF HE IS NO LONGER CAPABLE OF PERFORMING THAT JOB, HE SHOULD HAVE A LIMITED RIGHT TO ANOTHER SUITABLE JOB IN THE SAME ENTERPRISE.

20. AN EMPLOYER SHOULD OFFER RE-EMPLOYMENT TO AN INJURED WORKER IF SUITABLE WORK IS DEEMED TO BE AVAILABLE BY THE BOARD, OR FACE INCREASED ASSESSMENT COSTS.

21. EMPLOYMENT DISCRIMINATION FOR SEEKING AND/OR RECEIVING BENEFITS UNDER THIS ACT SHOULD BE PROHIBITED.

## PRINCIPLES

Underlying the proposals for change in the workers' compensation program are the following principles:

1. The structure of benefits in the Act should compensate for actual income loss, as closely as is reasonably possible, in recognition of the fact that the statute denies workers the right to sue their employers for damages from occupational injuries.

2. The effectiveness and acceptability of the Board's internal decision-making procedure should be enhanced by providing for external review and participation.

3. Because compensation is at best a poor substitute for prevention, and only a temporary and partial alternative to re-employment, the Board's efforts in the areas of accident prevention and vocational rehabilitation should be expanded.

## MAJOR PROPOSALS

1. THE CEILING FOR THE CALCULATION OF COVERED EARNINGS **(CURRENTLY $18,500) SHOULD BE INCREASED TO 250% OF THE AVERAGE INDUSTRIAL WAGE IN ONTARIO (APPROXIMATELY $40,000 IN 1980).**

Workers who are temporarily and totally disabled currently receive benefits of 75% of previous gross earnings up to a ceiling of $18,500 in covered earnings.

All Canadian jurisdictions now place some ceiling on the earnings covered by workers' compensation. Ontario's has been set at $18,500 since 1979, and now ranks seventh amongst Canadian provinces. When it was raised to $18,500, Ontario's figure represented approximately 125% of the average industrial wage in the province and encompassed the full wages of approximately 75% of all workers. However, because of the cumbersome legislative process required to change the numerical wage limit fixed in the statute, it soon lags behind increases in relative wages and employee payrolls.

Several provinces which have recently amended their workers' compensation laws have incorporated a solution to this problem of outmoded benefit ceilings. British Columbia, Saskatchewan, Manitoba, Quebec and the Yukon now mandate an automatic escalation of their ceilings according to a formula set out in statute. Saskatchewan and Manitoba revise their maxima to ensure that only 10% of claimants will have earnings above the current ceiling. Quebec and British Columbia use a formula designed to keep the ceiling at 150% of the average industrial wage index (thereby effectively covering 90% of workers' earnings in those provinces).

A pertinent question is whether or not any ceiling is warranted. Professor Weiler reasoned:

> "Recall that workers' compensation is not a social assistance program, neither based on need nor designed only to keep the disabled worker comfortably above the poverty line...Theoretically, I am not convinced that there is a good case for any ceiling at all. Popular concern about corporate executives, sports stars, entertainers, et al., can be dealt with by specific exclusions of these occupations from workers' compensation coverage in favour of private disability schemes."

Nevertheless, he continued, until other jurisdictions have explored the impact of removing earnings ceilings,

> "we must respond to the practical problem of insuring that essentially all the earnings -- not 80% nor even 90% -- of all the industrial workers in the province are protected by the same compensation legislation which takes away their right to sue in court to collect the remainder of any income losses which they may have incurred. Thus, I recommend a drastic increase in the ceiling -- raising it to 250% of the average industrial wage in the province, which works out to roughly $40,000 at the present time and would cover all the earnings of more than 99% of Ontario employees." [p. 34-35]

**ILLUSTRATION:**

Let us examine the effect of a ceiling increase from $18,500 to $40,000 on three different cases: a worker earning less than the current ceiling, one earning near the proposed ceiling, and one earning above this proposed level.

A worker who was earning $15,000 a year before his accident will obviously be unaffected by the proposed ceiling increase from $18,500 to $40,000, since his entire earnings would be covered in either case.

Another worker, however -- a miner, for instance -- earning $30,000 a year prior to his injury, would now receive benefits calculated on only $18,500 of these earnings. Since under the current formula benefits are 75% of gross earnings, the maximum the miner would receive annually for his temporary disability is $13,875 (75% of $18,500). Under the proposed system, his entire $30,000 annual earnings will serve as the basis for calculating benefits. The actual amount paid will be calculated on 90% of his net earnings (see #2 below) and will therefore be determined by the number of his dependants. If he has a wife and two children, for example, his net annual earnings are $22,984, and his temporary disability benefits will be 90% of that figure, or $20,686 per year.

Our third worker earned $10,000 more than the proposed $40,000 ceiling -- or $50,000 annually before his accident. Under the existing system only $18,500, or less than half his earnings, would be considered as a base for benefits, and he would receive only $13,875 a year. The new scheme will

consider $40,000 of the $50,000 as the benefit base; with a dependent wife and two children, he would be eligible for annual temporary disability benefits of $25,710.

Finally, it is important to note that this ceiling is not fixed in the statute at a specific figure, i.e., as $40,000. Rather, it is expressed as a function of Ontario's average industrial wage. Thus, each year the ceiling will move in tandem with prevailing wages in the province, varying with changes in the employer payrolls to which the Board's assessment rates are applied.

**2. TEMPORARY COMPENSATION BENEFITS SHOULD BE BASED ON 90% OF PRE-INJURY NET DISPOSABLE EARNINGS (INSTEAD OF THE PRESENT BASE OF 75% OF GROSS EARNINGS).**

Temporary benefits are now paid at the rate of 75% of previous gross earnings, up to a coverage ceiling of $18,500. Maximum benefits of $13,875 annually are therefore currently available. Minimum benefits for temporary disability have also been set, at $129 per week ($7,708 per year) or gross earnings, whichever is less.*

The primary reason for basing these calculations on gross income is that in 1915, when the workers' compensation program was first developed, there was no significant personal income tax in Canada. The original Act could reasonably assume that gross and net income was essentially the same.

It is proposed that the basic compensation benefit be calculated as 90% of net disposable earnings up to a covered earnings ceiling of $40,000 (see #1). Net disposable earnings will be computed by deducting federal and provincial income taxes, and the employee's C.P.P. and U.I.C. contributions from the worker's pre-injury gross earnings. Minimum benefit levels will also be maintained, but according to a formula which expresses them at 50% of the average industrial wage in Ontario (roughly $8,000 in 1980). The minimum is payable where a worker's net earnings are not less than that amount; he will, however, be eligible for the full amount of his net earnings if he earns less than 50% of the average industrial wage.

Basing compensation benefits on the worker's net take-home pay prior to his injury is more realistic and equitable than the existing scheme, as Professor Weiler points out; otherwise,

> "[a] single worker who now earns near that maximum [i.e., the proposed $40,000 ceiling] would collect more in compensation payments than he received in net disposable income from work. By itself this fact troubles a great many employers. The erratic and inequitable distribution of benefits by the current system troubles union leaders as well. The single, higher-income wage earners may profit from the current structure, but the lower-paid injured worker with a fairly large family suffers. He gets none of the benefits of non-taxability (since he has

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* Therefore workers earning beteen $129 and $172 per week receive the full $129; those earning less than $129 per week receive their full earnings in temporary disability benefits.

> little taxable income in any event), but he still loses the full 25% margin. Furthermore, raising the overall ceiling to cover higher income levels is of little benefit to the injured worker with a large family, because the stiff progressive tax structure would simply aggravate the distortions caused by the current tax situation...
>
> All parties I met with concurred that this situation must be changed, although there was much uncertainty as to how this might be accomplished..."[p. 38]

Although the concept of basing compensation payments on the worker's pre-injury net disposable earnings appears simple, difficulties arise in implementing this notion.

> "Income tax depends not simply on the worker's income, but also on the number of dependants he has, and whether the latter are also working... Theoretically, the Workers' Compensation Board could investigate all...factors and calculate the precise amount of the net loss for each week and pay the benefit accordingly. The problem is that this would reduce to a shambles the administration of a system whose tally of lost-time claims will soon reach 200,000 a year. Instead, we shall have to pursue this ideal of fair and precise compensation a little less ambitiously and make some artificial assumptions. Fortunately, Quebec has already taken this step, has confronted these problems, and has explored ways of dealing with them. Every year, Quebec establishes a schedule of net taxable income on the basis of the existing tax law at that time. The schedule calculates the tax in ten-dollar increments up to its compensation ceiling, figuring it for workers with from zero to ten dependants." [p.39].

Once we change from a "gross" to a "net" base for calculating compensation benefits, a revision must also be made in the income replacement ratio, which is now set at 75%. Quebec decided on 90% when it adopted the net income principle. From responses received, Ontario employers appear willing to accept this as a reasonable margin. The trade union movement has pressed for full compensation of 100% of previous net earnings. This appears unrealistic, since it ignores certain work-related expenses, as well as the need to maintain some marginal gain for the worker once he returns to work after his injury has healed. Thus, under the new Act, compensation benefits will be calculated as 90% of net earnings prior to the injury.

**ILLUSTRATION:**

The current system of paying 75% of gross earnings for temporary total disability, regardless of the number of dependants, gives rise to inequities and anomalies in some instances. An unmarried worker earning $10,000 a year has net annual earnings of $8,438. A married worker with two children who earns the same gross annual wage actually takes home $9,248 per year. Yet under the current system, these workers would receive the same benefits — $7,500 a year. Not only does this represent an inequity to the married worker, whose take-home pay before the injury was higher than the single worker's; but the shortfall from their pre-injury net pay is substantial in both cases, and is a significant hardship at these low income levels.

Four separate examples will be used to demonstrate the advantages of the proposal that temporary compensation benefits be based on 90% of net income: a low-paid worker earning substantially less than the current ceiling; a worker earning close to this ceiling; a worker earning substantially more than the current maximum (close to the proposed ceiling); and, finally, a worker who earns little enough to qualify for minimum temporary disability benefits. The situations of a single worker and a married worker with two children are examined alternatively for each case.

A married worker with two children who was earning $10,000 before his injury will be given $8,323 annually under the new scheme — considerably more than he receives under the existing scheme ($7,500). Moreover, he appropriately gets more than would an unmarried worker earning the same amount, who would receive $8,000 (compared to $7,500 under the existing Act).

Now let us consider a worker whose earnings were near the existing ceiling, say $18,000, before his accident. Currently he receives benefits of $13,500. Under the new scheme he will receive $13,501 if he is married with two children; if he is single, he will receive $12,654, or less than he does currently.

In the third instance we have a highly-paid worker earning $30,000 annually. He presently receives the maximum allowance in temporary compensation benefits ($13,875). Under the new

system he will receive $20,686 if he is married with two children, and $19,578 if he has no dependants.

Our final example involves an unmarried worker earning $8,000 annually before injury. If this worker becomes temporarily totally disabled, he is eligible under the current scheme for $6,708 annually, the minimum benefit, (as are all workers earning between $6,708 and $8,944 annually), regardless of the number of his dependants. The proposed plan bases the calculation of minimum benefits on 50% of the average industrial wage (which amounted to about $8,000 in 1980). If a worker earns less than that amount, he will receive the full amount of his net earnings. Since the worker in this example takes home only $7,002 annually, he would be eligible to receive this entire amount.

**3. A DUAL AWARD SYSTEM SHOULD BE INSTITUTED FOR PERMANENT DISABILITY: A LUMP SUM TO BE PAID ACCORDING TO THE DEGREE OF IMPAIRMENT, AND CONTINUING PERIODIC PAYMENTS TO BE MADE ONLY WHEN WAGES ARE ACTUALLY LOST.**

Currently, the magnitude of a permanent disability award is based on the estimated degree of impairment according to a fixed permanent disability rating schedule. For the loss of a hand at the wrist, the schedule dictates a pension benefit of 50%; for loss of a leg above the knee, 50%; and so forth. This percentage disability rating is then applied to 75% of the injured worker's previous gross earnings. These benefits are paid on earnings up to the covered ceiling ($18,500), so that the maximum award for a 100% disability is $1,156 per month. Benefits are now paid irrespective of the extent of actual earnings impairment, whether this be more or less. As Weiler comments:

> "It is child's play to sketch examples which show the anomalous, even absurd, results. A staff lawyer who loses his left hand (perhaps in a car accident while driving to court) would receive a lifetime pension much higher in amount than would a labourer, because of the difference in their previous earnings to which the percentage rating is applied. This is so even though the lawyer would suffer no long-term income loss at all, while the labourer, who might be theoretically capable of performing a different job, might be unable to find suitable and available work because of his personal characteristics (age, literacy, or skills) or environmental factors (geographic location or economic conditions)." [p. 53]

And later, in regard to the injured labourer:

> "The same Act which offers only the facade of adequate compensation for his real-life economic losses also denies him the right of access to the courts to try to recover the difference. By the early Seventies, the degree of injustice felt by injured workers had become intolerable. The Act was amended in 1975 to provide that the Board could supplement the clinically-determined pension in cases 'where the impairment of earnings capacity of the employee is significantly greater than is usual for nature and degree of his injury' [under s.42(5)].

... One could tinker with s.42(5) to cure its deficiencies. A preferable step is to rethink our entire approach to compensation for permanent partial disabilities. We must also consider the

other side of the coin, which does not generate the same emotions, but which is significant nonetheless. Fully 90% of the permanent partial disabilities are rated at 20% or less. The vast majority of these benefits are awarded to people who can and do continue to work full-time without any drop in their earnings level. Yet, besides their regular income from these jobs, they are entitled to a lifetime non-taxable pension. This seems incompatible with the basic principle of workers' compensation, which is to compensate for a loss of income, a loss which did not occur in these cases.

Even if we recognize and accept the true fact of the matter — that workers' compensation is giving these people some redress for the impact of a permanent disability on their non-working life — it seems incongruous to base this form of benefit on a percentage of previous income. It is even worse to pay this money out in the form of a periodic pension, and in numbers and amounts which stand as the major obstacle to the adoption by workers' compensation of the principle of regular inflation adjustment for the much smaller number of pensions which are needed by injured workers to live on and to support their families.

In a sense, the nub of our problem is that we have been trying to do two things with the one instrument. We want to make up the earnings which have been lost from work and at the same time to provide some redress for the serious impact of a permanent physical disability on an injured workers' nonworking life. The result is that the permanent partial disability award performs neither of these tasks very well. In principle, the solution appears simple. We should have two distinct benefits in this situation, each tailored especially for its own purpose." [pp. 53-55]

This reasoning is persuasive. It is therefore proposed to initiate a dual system of compensation for permanent disability cases. First, the Board will be directed to pay lump-sum awards to individuals who lose a limb at work or suffer some other serious physical impairment. In terms of degrees of impairment, these awards will range downwards from the figure at which the income ceiling is set — $40,000 in 1980, the amount which will be payable for any total physical disability. Such awards should also vary with the age of the worker at the time of the injury. The loss of a limb is clearly felt over a much longer share of a worker's life span if it occurs when he is young (e.g., 20) rather than old (e.g., 60). Thus, the basic lump-sum calculations related to degree of impairment will be further adjusted,

upwards or downwards, by a factor of 2% for every year of age above or below the mid-point of 40 years old.

Second, the Board will also provide periodic compensation benefits designed to replace the net wages which an individual worker actually loses as a result of his physical impairment. Rather than having to predict, once and for all, the economic impact of a physical injury which may affect a person's working career for perhaps 25 or 30 years, the Board will have the flexibility to review the actual job and earnings situation of the disabled worker, and to adjust accordingly the size of the benefit paid. Among other advantages, such a system will provide even greater incentives to both Ontario employers and the Board to improve their rehabilitation and re-employment programs in order to reduce the amount of actual wage losses experienced by injured workers. At the same time, the worker must also have an incentive to cooperate in these efforts. Thus, if an injured worker refuses to accept employment which is suitable for him and was actually available to him, the Board will be empowered to deem that he is effectively earning the income from such a job in calculating the wage loss for which he is to be compensated under the statute.

**ILLUSTRATION:**

Two steelworkers, a 30-year-old woman and a 50-year-old man, earned $25,000 a year prior to their accidents. The back injury which each suffers at work is rated as a 30% disability under the existing Act, and produces for each an annual pension of $4,163, adjusted periodically for inflation as the Legislature determines.

Both pensions might also be supplemented by the Board for a limited period on the authority of s.42(5), noted above. No lump-sum payment would be made unless one of the workers received permission to have the pension commuted; this might be advantageous if an injured worker were, for example, trying to raise the capital necessary to become self-employed.

Although the back injuries sustained by these workers were rated as only 30% disabilities, in fact the re-employment prospects of either — certainly at their former jobs — are not favourable (although vocational rehabilitation provided by the Board could improve such prospects). The percentages of disability listed on the current rating schedule often offer little indication of a workers' actual ability to return to work at a job similar to the one held before the injury.

Under the new Act both workers would receive lump-sum payments, determined by the income ceiling in effect for that year (not the workers' wages), the percentage disability, and the workers' ages. In this case the younger worker would receive a lump-sum payment of $14,400, calculated as follows: $40,000 (the 1980 income ceiling) times 30% (the extent of the disability), plus 20% (adjustment for age 30). ($40,000 X .30 = $12,000; $12,000 X .20 = $2,400; $12,000 + $2,400 = $14,400.) The older worker would receive $9,600, calculated as follows: $40,000 times 30%, minus 20% (adjustment for age 50).

Each of these workers would also receive a pension benefit based on the amount of subsequent wages actually lost, not a fixed sum, as before. Suppose that the young woman worker is well-educated, suffers from no competitive disadvantages in the labour market other than her disability, and is able to develop a successful career as a radio broadcaster. The Board will pay her 90% of the difference in the net earnings between the two jobs. If her current net earnings exceed her previous net earnings (adjusted from time to time for inflation to reflect what she would have earned as a steelworker), then her compensation payments will cease. If, however, her back problems due to her original injury permit her to work only part-time, and thus at a lower annual income, workers' compensation will once again pay her 90% of the difference in net earnings.

Our older worker fares less well: his age, education, skills, and social experience prevent him from returning to the work force after his disability. He has three dependants, limited English language abilities, and is comparatively uneducated and unskilled, having spent his entire working life in a physically demanding job in heavy industry. He now suffers from low back pain and a deteriorating disc condition. Initially, he is unable to find re-employment. Only too often under the existing Act are unfortunate victims such as this one likely to require welfare assistance.

The new system takes into account all of this older person's actual lost wages in determining his periodic benefits, since these losses do flow from his work-related physical injury as it affects his personal characteristics. After vocational rehabilitation, this disabled worker may find a suitable job, not withstanding his physical handicap — perhaps with his old employer, as an order clerk earning $12,000 annually. However, during the rest

of his working life he will retain this margin of security — compensation for 90% of the difference in net earnings between his pre-injury and post-injury employment.

If some years after his injury the worker loses this new employment, the Board must then decide whether or not the additional wage loss is attributable to the original compensable injury. If the worker is unemployed because he and his fellow employees have gone on strike against the employer, his reduction in earnings would be unrelated to the initial injury, and no compensation would be payable for it. In principle, the same would be true of an economic layoff which affects the work force generally, If, however, the worker is able to show that his layoff was due to his lower ranking on the seniority list after his post-injury job transfer, or that he was not able to take alternative, physically demanding work which otherwise would have been available, he would be entitled to compensation because his loss is ultimately caused by his original injury.

Unquestionably, as Professor Weiler says,

"[the] creation of a more sophisticated form of permanent partial disability benefits [will] expand the need for administrative judgment by the Board and the potential for human error and conflict. However, if such a change in the substance of the program [will] produce major improvements in our ability to adequately compensate those workers — and only those workers — who suffer real economic losses because of industrial injuries, the additional administrative burden and bureaucratic discretion [will] be a small price to pay." [p. 59]

To illustrate the operation and the rationale of the proposed lump-sum approach to permanent physical impairments which may not produce actual wage losses, let us consider two employees of a large business — a 50-year-old staff lawyer and his 25-year-old clerical assistant. As a result of a motor vehicle accident during the course of their employment, each loses a hand at the wrist, an injury rated as a 50% disability, which produces under the existing Act a pension of 50% of 75% of previous earnings (up to the covered ceiling). The staff lawyer, who earns $50,000 annually, receives a $6,938 annual compensation pension in addition to his regular salary; his $11,000-a-year assistant gets a compensation pension bonus of $4,125 per annum. And yet neither suffers the least income loss after returning to work.

Under the new Act, still assuming no income loss, they would receive lump-sum awards, and nothing else, because they both returned to their old jobs. The lawyer would receive $16,000, calculated as follows: $40,000 (the 1980 income ceiling) times 50% (the extent of disability), then minus 20% (adjustment for age 50). The clerical assistant would receive $26,000, calculated as follows: $40,000 times 50% plus 30% (adjustment for age 25).

**4. "STACKING" OF BENEFITS SHOULD BE REDUCED BY DEDUCTING C.P.P. DISABILITY AND SURVIVOR BENEFITS FROM W.C.B. BENEFITS IN CASES OF PERMANENT DISABILITY AND SURVIVOR AWARDS.**

Besides workers' compensation, an important income-maintenance system available to disabled workers is a program established under the Canada Pension Plan which provides disability and survivorship benefits to persons who suffer a "severe and prolonged disability" which totally incapacitates them from working. Since eligibility for such benefits is based on the amount contributed to the C.P.P. during the person's working life, not all injured workers are necessarily in receipt of these benefits.

Nevertheless, for those who are eligible, benefits are paid irrespective of workers' compensation pensions, with the following result, noted by Weiler:

> "The typical permanently disabled worker in Ontario receives two benefits, one stacked on top of the other...[However], the aim of public policy must be to integrate rather than to pyramid the two types of benefits, whatever the criteria of each plan, whichever be the government that created it. In this fashion, we will achieve full compensation for disabled workers — but not over-compensation. The Canada Pension Plan is intended to establish a minimum floor for all Canadian workers. It is appropriate, then, that provincial workers' compensation serve as the last insurer which makes up the remaining income losses." [p. 41]

Saskatchewan and Quebec now offset C.P.P./Q.P.P. benefits received from workers' compensation benefits. It is proposed to do so in Ontario as well, in accordance with the fundamental principle that injured workers should receive essentially full compensation for lost take-home pay, but that a person must not enjoy post-injury benefits which are greater than pre-injury income.

**ILLUSTRATION:**

Three examples follow which show how an injured worker can receive <u>more</u> in post-accident disability payments than was earned prior to the injury <u>if the worker receives C.P.P. disability benefits</u>.

Three totally and permanently disabled workers are each eligible for the C.P.P. annual disability

benefit of $3,228*, because their injuries were judged to be "severe and prolonged." The first worker earns $10,000 annually, taking home $8,438; the second has gross earnings of $20,000 and net of $15,439; the third earns $30,000 and takes home $21,753. The combined W.C.B. and C.P.P. permanent total disability awards for these workers would be $10,728, $17,103 and $17,103 respectively. Note that in the first two cases this amount exceeds pre-accident net income, in the first case exceeding even pre-injury gross income.

How will the proposed scheme affect these workers' entitlements? Recall that besides the lump sum for which they are eligible in cases of permanent disability (see #3 above), they are also to receive 90% of pre-accident net income, with the added stipulation that C.P.P. disability benefits are to be taken account of in this calculation. (The workers are all assumed to be totally disabled, so there is no question of deemed earnings).

The worker earning $10,000 annually will receive W.C.B. permanent disability benefits of $8,000 annually (i.e., the minimum rate of compensation for a worker rated as total disabled, from which the Board will be empowered to deduct the $3,228 in C.P.P. disability payments which he receives. The injured worker, of course, still receives the full $8,000, but only $4,772 of this comes from the Board.

The second earned $20,000 before his injury. Under the proposed scheme he will receive $14,218 in benefits, computed from his pre-injury net income minus the $3,228 in C.P.P. disability benefits for which he is eligible, all times 90%.

The third worker, who earned $30,000 annually, will receive $19,901 in disability payments, of which $3,228 will be the C.P.P. disability award and $16,673 in benefits from the Board. This $19,901 represents a full 90% of his previous net income. In all cases these awards will, of course, be adjusted annually for inflation (see #8 below).

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* C.P.P. disability benefits of $269 per month are available, regardless of number of dependants.

**5. WAGE LOSS BENEFITS FOR PERMANENT DISABILITY SHOULD CEASE WHEN THE WORKER ATTAINS THE AGE OF 65, TO BE REPLACED WITH RETIREMENT INCOME LOSS BENEFITS.**

Currently, permanent disability awards continue for the life of the worker. However, since most retired workers begin receiving benefits — usually at age 65 — from public or private pension plans, the problem of stacking one benefit on top of another becomes particularly acute at this stage.

Weiler points out that employers object to the fact that

> "[the] Workers' Compensation Board pays a lifetime pension, on top of which will be stacked the flat-rate Old Age Pension, the contributory Canada Pension Plan, and private pension benefits. Take the case of an older worker who is over fifty when he is injured, after he has already accrued vested public and private pensions in significant amounts. The pyramiding of a non-taxable workers' compensation pension (especially the more generous one which I recommend) with this variety of public and private retirement plan guarantees that such a disabled worker will enjoy a far higher retirement income than if he had worked through to his normal retirement age." [p. 43]

Thus, Weiler recommends that the benefits for loss of wages should last until the disabled worker reaches the age of 65, to be replaced then by a compensation benefit which insures the worker against the loss of retirement income occasioned by his injury.

Implementing this principle will require that the Board develop formulas which measure the impact of an occupational injury on the amount of retirement income which would have been received had the injury not occurred. The situation is complicated by the fact that a compensable injury may not only reduce the accumulation of retirement income for the period following, but may also affect the vesting and the quality of pension benefits accrued under an employer-sponsored plan according to years of pre-injury service. In fairness, the injured worker must be insured under the statute against loss of retirement income from either of these sources. There remains the question of how best to do this.

Certain of the several government-sponsored benefits will be unaffected by the injury; e.g., the non-earnings related Old Age Security scheme. Benefits which are lost under the Canada Pension Plan, which is based on contributions for years of employment, will have to be

made up by the Workers' Compensation Board, since Ontario cannot change the federal legislation which now restricts the accumulation of benefits during periods of unemployment due to an occupational injury.

As regards private pension plans, a disabled worker who must leave his current employer and/or take a lower-paying job will suffer a loss in some of his ultimate retirement income as a result. Thus, the Board must be directed to set aside funds which will provide a standard retirement benefit — at the maximum level permitted by the Income Tax Act for private pensions — to accrue while wage loss compensation is being paid because of an occupational injury.

As for pension benefits which have already accrued for previous years of service (but may not yet have vested), employers will be required to permit workers who must leave their employ as a result of a compensable disability to retain these benefits — including spousal benefits — even if the plan in question does not grant this right to employees who leave for other reasons. This principle of preservation of private pension benefits for disabled workers should also entail upgrading the quality of benefits for previous years of service -- e.g., in a "final average earnings" type of plan -- which would normally have resulted if the worker had not suffered the compensable injury and had been able to remain under the umbrella of the existing plan.

Some concern has been expressed about this proposal of Professor Weiler's, particularly as it affects workers (such as farm workers) in industries where private pension plans are not common. In principle, it is questionable whether the workers' compensation program should continue to provide these people with a post-retirement pension which is considerably in excess of what they would have received had they not been injured at all. In any event, all citizens of Ontario do have a basic minimum retirement income produced by the Old Age Security (O.A.S.), the federal Guaranteed Income Supplement (G.I.S.), and the provincial Guaranteed Annual Income System (G.A.I.N.S.), even if there had been absolutely no participation in the contributory C.P.P. And the minimum floor of compensable earnings under the new statute — 50% of the average industrial wage -- will be available to top off the level of retirement income coming from these programs in any situation where it would fall below this amount.

**ILLUSTRATION:**

An automotive plant worker suffered a back injury 10 years ago, at the age of 55. He was earning $11,000 at the time, and had been working

for the same employer for 15 years. Had he not been injured, he would have retired when he reached 65 in 1981. However, the worker is unable to return to work in this plant and is entitled to compensation benefits as a result. He can also look forward eventually to the basic Old Age Security Pension, to retirement income he has accumulated under the Canada Pension Plan, and to credits accrued under his employer's private pension plan for previous years of service. Under the current Act, all these sources of income would simply be stacked on top of the lifetime compensation benefit. Under the new Act, all these benefits would be integrated as components of an overall level of retirement income.

Let us suppose that at the time of injury the worker's retirement pension was calculated at $175 a month for his 15 years of service. Entitlement to this amount may have vested under the plan. However, under the final average earnings plan in effect at the plant, the normal increase in the employee's income during the next decade would have improved the level of pension actually payable for the same 15 years of service, perhaps to $350 per month as of the anticipated retirement age of 65. Rather than let the private pension plan enjoy this kind of windfall savings from the worker's injury, the pension ultimately payable for pre-injury service should be maintained and upgraded as it normally would have been, had the injury not occurred.

During the period following the injury (actually starting from 12 months later; see #6 below), it is the Compensation Board which will have to replace the loss of retirement income — under either the Canada Pension Plan or a private plan — because the injured employee is either unable to work at all or able to work only at much lower-paying jobs. For this purpose, the Board will set aside an additional amount, based upon a percentage of the actual wage-loss compensation which it has paid the worker subsequent to his injury, in an amount which is sufficient to generate the maximum level of pension benefits now contemplated under the Income Tax Act: 2% per year of the full net wage loss suffered by the worker as a result of his disability.

**6. THE EMPLOYER SHOULD MAINTAIN THE WORKER'S EMPLOYMENT BENEFITS (INCLUDING PRIVATE PENSIONS) WHILE THE WORKER IS ON TOTAL DISABILITY BENEFITS, FOR A MAXIMUM OF ONE YEAR.**

Under the current program, no allowance is made for the fact that a worker may lose out on a variety of benefits provided by his employer when he is off work for a considerable period because of an occupational injury. Whatever may have been the case when workers' compensation was first established nearly 70 years ago, there can now be no doubt that such "fringe" benefits as employer-paid OHIP premiums, supplementary health insurance such as Blue Cross, dental plans, and especially employer-paid pension plans (of which mention has already been made) are elements of the overall compensation package which are too significant to be ignored any longer in a program which promises workers decent redress for the losses they suffer when they are hurt on the job. Professor Weiler states that

> "[the] workers' compensation system must be designed to maintain the private benefit package previously provided by the employer, or at least to compensate the injured worker for the loss of those benefits. So-called fringe benefits now typically comprise 25% to 30% of the total compensation package paid to employees for their services. Much of this is in the form of paid non-working time: statutory holidays, vacations, and leaves of absence for a variety of reasons. I do not think that the Workers' Compensation Board should have to calculate the value of this time off and pay that amount to an injured worker who, after all, is not going to be at work in any event. But such significant benefits as employer-paid OHIP premiums, supplementary health care protection, dental plans, and contributions to a private pension scheme have become too important to be left out of consideration by workers' compensation. Most employers, in fact, now maintain these benefits in place for injured workers who will be returning to their jobs within a reasonable time. I believe the simplest solution to this problem is to require that all employers keep their injured workers covered by their benefit plans for as long as they are on <u>temporary</u> total compensation benefits (rather than have the Board recycle this cost to the injured worker out of the employer's assessment)." [p. 44]

The draft Bill, attached requires that the employer bear this responsibility for some time (as many now do, whether under a collective agreement or voluntarily). Only after the injured employee's absence from work has lasted for a substantial period should this burden be shifted to the Board. However, because the date for judgment about when a temporary disability has become permanent is unpredictable, it seems more sensible to fix the dividing line at approximately 12 months. As well, since it would be difficult for the Board to maintain in place the tremendous variety of benefits now enjoyed by potential claimants in all industries in this province, the Board should have the option of developing criteria under which standard compensation will be paid for loss of fringe benefits — in cash, rather than in kind.

7. **IN NEW FATAL ACCIDENT CASES, SURVIVOR AND DEPENDENT AWARDS SHOULD BE DECIDED ACCORDING TO A NEW FORMULA: ANNUALLY ADJUSTED PENSIONS CALCULATED ON THE BASIS OF THE DECEASED'S PRE-ACCIDENT EARNINGS (RATHER THAN FLAT RATES, AS CURRENTLY), THE PERCENT OF SUCH AWARDS TO VARY WITH THE AGE OF THE SPOUSE:* A CAPITAL SUM EQUAL TO 250% OF THE AVERAGE INDUSTRIAL WAGE (APPROXIMATELY $40,000 IN 1980), ADJUSTED FOR SPOUSE'S AGE, AWARDED TO THE SPOUSE; SUCH CAPITAL SUM TO BE THE SOLE COMPENSATION OF SPOUSES UNDER 40 WITH NO DEPENDANTS.**

Only 322 out of a total of 460,000 claims reported to the Board in 1979 were fatalities, arising from either industrial accidents or disease. Currently, a spouse's pension is $410 per month, with an additional $112 per month for each dependent child. A lump sum of $1,000 is also awarded, plus funeral expenses up to $1,000.

It has been a requirement of the Act since its inception to pay flat-rate pensions for dependent survivors, regardless of the earnings of the deceased worker, the length of the marriage, or the economic circumstances of the survivor. In this regard, Weiler noted that

> "[only] in the last few years has the inequity of such a rigid rule become evident to those responsible for compensation legislation in this country. Statutory revisions of survivorship benefits have been enacted in a number of Canadian jurisdictions. It is long past time that Ontario address this issue as well... If the wage-earner's life is suddenly and unexpectedly terminated by an industrial injury, it is the individual family's income level which the compensation system must maintain, not an abstract arithmetic need averaged over the employment spectrum... Hence, I recommend that the basic survivorship benefit for the sole surviving spouse be set at 75% of the workers' previous net disposable earnings, less the Canada Pension Plan survivorship benefit. For the spouse with a dependent child or children, we should simply pay the same pension which we would give an injured worker with a permanent total disability." [pp.46-48]

In the draft Bill, it is provided that the basic survivorship pension should be related to the income of the deceased worker (subject to the minimum referred to earlier).

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* Recall that C.P.P. survivor awards are to be deducted.

However, as Professor Weiler goes on to argue, once this crucial judgment has been made about the amount of survivors' benefits, one must then rethink and redefine the notion of "dependency" upon which entitlement to such benefits has historically been founded:

> "[Women] have entered the labour force in dramatically higher numbers in the past 20 years. This is true not simply of single women but also of married women. In the last few years it has become apparent that more and more married women are returning to work after staying home for a period of child-bearing and child-rearing. These socio-economic changes have recently produced major revisions in Ontario's matrimonial property and maintenance laws. In the cited case of the 25-year-old recently-married woman, if there had been no fatal accident and instead the marriage had broken up because of domestic troubles (statistically not an improbable event), the wife could claim only little or no financial support from her spouse. Even in the case of longer marriages and older women, the assumption which now underlies the law of maintenance payments is that these are rehabilitative in nature, designed to facilitate re-entry into employment, and not a life-long source of support. In my view, as part of its overalll rationalization of survivors' benefits, workers' compensation must accommodate this new concept of the marriage relationship and spousal dependency." [p.49]

In the result, a detailed proposal for compensation in fatal accident cases emerged from the Weiler report:

> "i) All surviving spouses would be entitled to a capital sum from the Workers' Compensation Board in connection with a fatal injury, irrespective of whether they were husband or wife, ... working or nonworking, planning to remarry or not...This payment is intended to give some recompense for the severe emotional trauma inflicted by the loss of one's spouse, and also to provide a means of adjusting to the termination of that source of family income. [This amount will be calculated on the same formula as that used in #3 above, with 250% of the average industrial wage (about $40,000 in 1980) used as the base.]
>
> ii) This lump-sum indemnification should be the sole entitlement to workers' compensation benefits for spouses under the age of 40 with no dependent children. However, the Board should have the discretion to grant some income

maintenance benefits in cases of special hardship, be it due to illness or to inability to obtain employment notwithstanding good-faith efforts. As well, the non-working spouse should be entitled to use the vocational rehabilitation services of the Board to facilitate a return to work, and the Board should develop a program for this type of situation (one which might serve as a model for other social programs).

iii) Should the spouse have dependent children, the income related pension would be paid until the last child reaches the age of sixteen, at which time [any child over age 16 who remains in high school or college will receive a benefit of 10% of the deceased's previous net disposable earnings (annually adjusted for inflation — see #8)].

iv) Should the spouse be at least 50 years old at the time of the fatality, the income-related pension (75% of net disposable income minus the C.P.P survivors' benefit) should be paid until the date at which the [spouse reaches age 65], at which time full retirement income is to be provided.

v) For those spouses whose age is more than 40 and less than 50 at the time of the fatal injury, [one-eleventh] of the income-related pension should be payable (until 65) for each year of age [from] 40 at the time of the fatality. The object of this is to create a graduated response to age differentials, rather than the sharp total distinction drawn by Quebec at age 35 (which dictates a lifetime pension for the spouse who is 35 years old plus a day, but permits no such benefit to the spouse who is 35 years old less a day).

vi) I would retain the provision in the current legislation which terminates the dependency pension for the spouse upon remarriage or its functional equivalent (as defined in Ontario's recent matrimonial law reform). As stated in (i) above, remarriage would not affect the spouse's entitlement to the lump-sum award." [pp. 49-51]

The draft Bill endorses the essential ingredients of this approach, with one important addition. The lump-sum payments to spouses should vary with the age of the surviving spouse, in recognition of the considerable differences in the length of time during which the

survivor will be deprived of the companionship of the deceased spouse. Not only is this approach consistent with the principle of age adjustment in calculating lump-sum awards for permanent physical impairment, but it also accords the young spouse, who ordinarily will receive nothing but this lump sum, a larger amount than the older spouse, who is entitled to a long-term, income-related pension as well.

**ILLUSTRATION:**

Four examples are used to illustrate entitlements under the new Act for survivors of those who are fatally injured at work. The first shows how such benefits will be income-related in future. The second and third show that such pensions will not necessarily be awarded for life, but will vary with the dependency status of the survivors. Finally, an example is given of a fatality where the survivor is under 40 years of age and has no dependants.

(1) A 55-year-old woman has been married for 30 years to a man who currently earns $30,000 per year. If he is killed at work, the Board is currently entitled to award her only a $1,000 lump-sum payment and a flat-rate pension of less than $5,000 annually. In addition, she will receive less than $2,000 in C.P.P. survivor benefits, as well as any other private insurance payments to which she is entitled.

Under the proposed scheme, her pension will be 75% of her husband's net earnings prior to his accident (less any C.P.P. survivor awards payable), or about $16,500 annually. This benefit will continue, with periodic adjustments for inflation, until the widow reaches age 65, when it will be replaced by the retirement income from employment she would be receiving had her husband died just after retirement (see #5).

This widow is also entitled to $28,000 as a lump-sum award upon her husband's death, based on her age (55) at the time of his death. Deducted from this will be any other lump-sum amounts already paid to her husband in connection with the injury (if there had earlier been an award for a permanent impairment before it led to the fatality).

(2) A 32-year-old woman with two dependants, age 12 and 14, is widowed by an industrial accident. Prior to his death, her husband had been earning $25,000 per year. Under the current Act she is entitled to a $1,000 lump-sum payment, to flat-

rate benefits for herself and her children amounting to $7,608 annually, and C.P.P. survivorship awards.

Under the new Act, however, since she has dependent children, she will receive 90% of her husband's previous net income, or $17,819 (less the C.P.P. survivor benefit payable). Benefits at the rate of 90% (adjusted annually for inflation — see #8) are paid until the youngest child reaches age 16, after which each child still in school receives a benefit of 10% of the father's pre-accident net income. She is also eligible for a lump-sum payment of $46,400 at her husband's death.

(3) A woman is 46 years old and has no dependent children (either because she never had children or because they are no longer dependent or under 16); her husband was earning $25,000 at the time of his fatal accident. According to the new scheme she will receive 75% of her spouse's net earnings, adjusted for her age as follows:* for each year of her age between 40 and 50, she receives one-eleventh of the income-related pension. Thus, she would receive 7/11 times 75% of $19,611, or $9,360 annually. She also receives a lump sum based on her age at the time of her husband's accident.

(4) A 25-year-old woman worked for five years as a skilled secretary before marrying a year ago. She has no children. Her husband is killed at work. She will be paid a lump-sum award of $52,000 under the new Act (calculated as follows: $40,000 [the proposed ceiling] plus 30% [adjustment for age 25]. $40,000 x .30 = $12,000; $12,000 + $40,000 = $52,000.). However, the expectation of the overall program is that within a relatively short time she will rejoin the work force in order to support herself; thus, she will not receive a periodic pension from the Board. However, the Board will have the discretion to provide ner with both vocational rehabilitation, if needed, and a supplementary benefit if she is not able to return to work for a protracted time, whether because of illness or for some other legitimate reason.

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* This adjustment of pension for age is done for all surviving spouses between the ages of 40 and 50.

**8. COMPENSATION BENEFIT AWARDS UNDER THE NEW ACT SHOULD BE REVIEWED ANNUALLY BY CABINET FOR POSSIBLE ADJUSTMENTS FOR INFLATION, SUCH REVIEW TO FOLLOW A PUBLIC REPORT BY THE WORKERS' COMPENSATION BOARD AND ANY SUCH ADJUSTMENTS TO BE MADE BY REGULATION.**

After it is determined that a worker's injury has resulted in a permanent impairment of earning capacity, the existing Act awards a disability pension for life. Such pensions,* of course, are vulnerable to erosion by inflation and so must be revised periodically by the passage of special legislation. Given the crowded legislative agenda each year, however, and the time-consuming debate about proper benefit levels, such increases have been sporadic. This lack of regular annual increases has penalized some injured workers in the intervals between the legislated increases, and it evokes qualms in the business community because of the sudden changes in dollar figues, which it engenders.

The Weiler report contended:

"It is long past time for Ontario to make an explicit judgment of policy about the problem of workers' compensation and inflation, and to develop legislative criteria and a procedure which will deal with the issue in a relatively principled and non-partisan fashion.

In addressing this issue as a matter of principle, there should be no question about the entitlement of workers' compensation claimants and pensioners to inflation adjustments as a matter of right. Indeed under the new structure of benefits which I propose, the adjustment would take place automatically for almost all new claimants. Benefit criteria would no longer be expressed in arithmetic terms. Both the maximum and minimum would be functions of the average industrial earnings in the province. Survivors' benefits would be based directly on the previous earnings of the deceased worker. This means that as price inflation feeds wage movements in industry, workers' compensation benefit levels for newly-injured workers would go up in tandem.

However, this would not be true of existing pensions, those which were granted to workers some time earlier [but after the new Act came into effect]. These benefits must initially be calculated with reference to the wages then paid the

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* As well as the benefits paid to workers on temporary total disability for an extended period of time, i.e., more than one year.

> injured worker. As these figures are eroded by inflation, a positive initiative is needed to revalue them. But there is nothing absolute in the nominal figure originally used by the Workers' Compensation Board to fix the pension. In the final analysis the point of this pension was to establish the disabled worker's right to share in the real goods and services generated by the Canadian economy. Inflation causes a general increase to occur in the money price of that same real basket of goods and services. If the government or citizenry of Ontario is not prepared to justify an explicit reduction in the real entitlement of workers' compensation pensioners, to take such a step as a conscious policy, they must not tacitly permit the same result to come about by allowing supposedly impersonal economic forces to take their course. This is why I deliberately speak of an adjustment to, rather than an increase in, pension benefits to take account of intervening inflation. We must keep clearly in mind that no real improvements to benefits are at issue here. We do no more than avoid an erosion in real income levels we earlier awarded to workers' compensation pensioners" [pp.69-70]

The Report also emphasized that adoption of the principle of inflation adjustment would not require similar adjustments in the percentage rate of compensation assessments upon employers.

> "Just as inflation produces the need for adjustment of workers' compensation benefits to monetary inflation in order to provide distributive justice to the injured worker (again, recall, not to increase the real value of the benefit), so also inflation generates the financial wherewithal for the compensation system to pay for that adjustment. It does so through the impact of price inflation on the Workers' Compensation Board revenues, either from assessment of current employer payrolls or from the rate of return on its investment portfolio" [pp.71-72]

Concerning the criteria for determining the size of the annual adjustments to workers' compensation benefit payments, Professor Weiler considered three indicators: the Consumer Price Index (CPI), the average industrial wage, and the Gross National Expenditure(GNE) implicit price deflator for personal consumption expenditures. Each, considered on its own, has shortcomings. The CPI (adopted for workers' compensation benefit adjustments by British Columbia, Quebec, Nova Scotia, Saskatchewan and the Yukon) is only a rough measure of overall price inflation: it does not allow for consumer substitution

as certain goods and services become relatively more expensive, and, most important, it fails to recognize "that on occasion the citizens of Canada may have to absorb a cut in their real incomes as a result of unfavourable change in the terms of trade which we face: whether from higher prices of OPEC oil, from a fall in value in the Canadian dollar relative to foreign currencies, from higher farm prices after crop failures due to bad weather, or from steeper interest rates pushed up by international inflation." [p. 73]

The average industrial wage is a better index in terms of compensation theory, appropriate for initially setting new claims each year, but inappropriate for long-term workers' compensation pensioners — the totally disabled and surviving dependants. The GNE implicit price deflator for personal consumption is better, and preferred by Professor Weiler, but is still not an ideal choice.

It would be a mistake to write into the statute a rigid legal rule which dictated automatic adjustments on the basis of a single index. Too many variables are relevant: not only the measures of inflation referred to above, but also the rate of return on the Board's investment portfolio and the overall growth in the provincial economy. These, after all, are the ultimate sources of the funds needed to pay for these benefit increases. On the other had, it is desirable to regularize the process by which workers' compensation benefits are adjusted to inflation. Thus, the new Act will provide that on or before the first of November each year the Board will issue a public report recommending the appropriate adjustment in the light of a reasoned analysis of these factors. This report will be submitted to the Lieutenant Governor-in-Council for its consideration. The decision about the changes in benefit amounts will be made by regulation for the ensuing year.

**9. THE ONE-DAY WAITING PERIOD FOR BENEFITS SHOULD BE ELIMINATED, AND THE EMPLOYER SHOULD BE REQUIRED TO PAY THE INJURED EMPLOYEE HIS NORMAL WAGES FOR THE DAY ON WHICH HIS INJURY OCCURS.**

Currently workers' compensation benefits are paid starting from the working day following injury. However, since nearly 20% of injuries reported to the Board are for absences lasting less than a week, Weiler noted that

> "the original program did not compensate workers for lost time of less than seven days. This triggering point was not lowered to five days until 1952, to three days in 1963, and to the day after the injury as of 1968. Only Nova Scotia (3) and New Brunswick (4) retain such a waiting period in Canada, whereas in the United States a waiting period ranging typically from two to seven days is invariably in the statute. Ontario unions (i.e., the Ontario Federation of Labour) wanted me to complete the evolution by having the Board pay for any wages lost on the day of the injury itself. Right now employers typically pick up this bill voluntarily. Rather than overwhelm the Board by adding a large number of cases to be settled through the compensation program, I would prefer that the statute place a legal obligation on the employer to pay the wages of the employee for the day of his occupational injury." [p. 33]

The added administrative difficulties and costs for the Board's paying the large number of first-day claims, and the fact that many employers already take on this responsibility, combine to indicate that employers should be given the legal responsibility for paying injured workers' wages on the day of injury.

**ILLUSTRATION:**

> Two punch press operators who work for competing firms in the same industry suffer on-the-job injuries at noon on Monday and are off work until Thursday morning. Under the existing Act they receive statutory compensation payments for lost time only on Tuesday and Wednesday. One punch press operator — under the terms of a collective agreement — receives full wages from his employer for Monday, and workers' compensation for Tuesday and Wednesday. The other operator also receives workers' compensation for Tuesday and Wednesday, but only half a day's wages for Monday. This inequity is eliminated in the new Act, under which the employer of the second press operator would be required to pay him a full day's wages for Monday, the day the injury took place in this employer's workplace.

## 10. W.C.B. COVERAGE SHOULD BE EXTENDED TO DOMESTICS.

The Weiler report points out that

> "over the years workers' compensation legislation has gradually deleted almost all the statutory exclusions from compensation coverage. Farm workers, for example, a perennial bone of contention in other areas of employment law, were brought under the Workers' Compensation Act as far back as 1966. The one exception remains the domestic worker. Section 127 should be repealed. The Board would then be empowered to establish an industrial rating group at least for the full time housekeeper for whom the employer is already required to deduct taxes, et al. The day-worker (the person who cleans a number of houses on a regular cycle) poses substantial administrative difficulties for workers' compensation. However, inclusion under the statute would at least entitle these workers to the benefit of the statutory repeal of the common-law defenses against possible tort actions. At the minimum, this would provide the "cleaning lady" who may be injured in a home with a fair chance to collect under the homeowner's insurance policy." [fn., p.32]

**ILLUSTRATION:**

In extending coverage to the housekeeper who works full-time for one employer, the Board will first designate a "rating group" for the employers of all such workers and then establish a premium assessment rate of so many cents per payroll dollar, this rate to be determined by the Board's actuaries. Employers of these workers would then be required to submit such assessments to the Board on those employees' behalf, probably on an annual basis.

In the case of the day-worker employed by a householder for only one day (or part of a day) every week or month, it is possible that no rating group or premium rate could be established because of the administrative difficulties in covering all such workers under the provisions of the Act. However, these day-workers will no longer be exempted from Part II of the Act. By repealing the statutory exclusion of domestics from coverage under Part II of the Act, the legal barriers are removed which, in the example, prevent a cleaning woman from suing a homeowner for damages for a work injury or from claiming under the homeowner's insurance policy.

**11. AN INDEPENDENT, TRIPARTITE APPEALS TRIBUNAL SHOULD BE ESTABLISHED.**

The preceding proposals have all dealt with the level of an entitlement to benefits under the Act. The remaining proposals deal with improving the administration of the Act, especially the handling of benefit claims. The cornerstone in this area is the new Appeals Tribunal.

The Workers' Compensation Board currently must process a caseload of over 450,000 claims annually. Inevitably, every year several thousand appeals are lodged. The existing appeal system does mete out a significant measure of legal justice, reversing or revising a substantial number of initial Board decisions. Despite this, the current system requires reform. Approximately 700 cases a year are pursued beyond the Board to the Ombudsman. Furthermore, cases where the Board and the Ombudsman are unable to agree may be reviewed by a Select Committee of the Legislature, and eventually may be debated by the Legislature.

Professor Weiler reported that

> "[everyone] I spoke to in the course of my inquiry - the Board, the Ombudsman, the MLA's, the employers, the unions and the leagues of injured workers - agreed that this situation has become intolerable: a waste of resources of the parties and the taxpayers, and a drain on the time and energy of the Ombudsman, the Legislature, and the Workers' Compensation Board itself" [p. 110]

and he suggested that

> "[what] is lacking in the current model is the perception of the structure for review in Workers' Compensation as truly <u>independent</u> of the administrative process which has generated these thousands of appeals every year. This, I believe, was the reason for the explosion of compensation appeals to the Ombudsman as soon as this external outlet became available. This is why there is a continuing refusal to accept the legitimacy of adverse compensation decisions, the serious erosion of finality in the system." [p. 111]

Recourse to the courts has traditionally been rejected for workers' compensation as too slow and too expensive for a program which has always prided itself on an informal administrative approach. The Ombudsman has provided a useful outlet from the current system and a signal that changes must be made. However, it is

desirable that the need for intervention by the Ombudsman be reduced.

Thus the new Act will provide for a Workers' Compensation Appeals Tribunal as the final authority in hearing and resolving appeals about concrete disputes in the application of the Act.

The new tribunal will be tripartite, patterned on the design of Canadian labour relations boards, but with wider representation. In addition to neutral vice chairmen, full-time and part-time side-members will be recruited from the ranks of business and labour. Individual appeals will be heard by three-member panels composed of a neutral vice-chairman and two side-members — one a representative of the business community, the other of labour.

Although this tribunal will be specialized in workers' compensation, it will be independent of the Workers' Compensation Board whose decisions it is reviewing: separate and distinct from the Board in its membership, lodging, budget, and organizational authority.

Rather than assume a strictly judicial posture, the tribunal will retain the administrative character that now exists in workers' compensation appeals. It will be capable of initiating its own investigations of issues rather than depend exclusively on existing submissions of the worker, his employer and the records of the Board.

The independent, tripartite Appeals Tribunal thus responds to several current concerns and offers in addition this notable advantage identified in the Weiler report:

> "A longer-range benefit which such a structure affords is that organizations of workers and business would come to appreciate the problems of workers' compensation in this province, as they see and hear of their representatives struggling with the inherent conflicts in the system and attempting to fashion viable compromises among the several legitimate but competing objectives of the program. In my view this kind of participation in making difficult compensation judgments by people who have to live and work under the body of compensation principes which they are interpreting and developing, is indispensable for renewing the legitimacy of the program and the morale of the three thousand people who deliver this service." (p. 114)

Finally, the Tribunal's decisions on the merits of specific appeals will be considered final for all intents and purposes. Only when the judgment of the Tribunal in a specific case raises questions of general principle will the Corporate Board be able to review such cases. The Corporate Board's authority will be limited to matters of general law or policy under the Act. It will be exercised only on the initiative of the Corporate Board, not as a matter of right through an appeal initiated by a party to a particular case. In any system where there are two important decision-making bodies, one must be given the final say. The Corporate Board — a body which is to be extensively revised (see #13) and will include the Chairman of the Appeals Tribunal — should have the last word about the general principles and policies embodied in the Act.

**ILLUSTRATION:**

Under the existing system claims are considered at the first level by claims adjudiction staff members. If an adverse decision is recommended by these Board employees, the claim file is automatically reviewed by an internal unit known as the Claims Review Branch. If the Review Branch agrees with the adverse decision, it is then communicated to the party affected by it.

If the reviewed decision is not acceptable to a party, it may lodge an appeal with the Board, and an Appeals Adjudicator will review the file and hold a hearing, if required. The Adjudicator may then either issue a written decision or forward the file to an Appeal Board (to which a written decision may also be appealed). The Appeal Boards are rotating panels of three members drawn from the sixteen Commissioners of the Workers' Compensation Board. This is the highest level of appeal within the Board itself.

If the appellant is still unsatisfied, however, he may approach the Ombudsman of Ontario, whose mandate to review governmental administrative decisions extends to cover workers' compensation. The staff of the Ombudsman will review the claim and, if they disagree with the decision of the Board, seek a further review by the Board.

If the Ombudsman is unable to convince the Board that it has erred (or vice versa), the Ombudsman brings the case to the attention of a Select Committee of the Legislature which considers the annual report of the Ombudsman. The Select Committee examines this report and includes unresolved cases in its report to the Legislature.

In some cases, therefore, a final, authoritative decision on a worker's claim for compensation for a work-related injury may not be reached until after there has been a debate and vote in the Legislature itself and even then, under the existing Act, the Board must make the final decision.

Under the new Act, the procedure will be streamlined so that a final decision may be reached more quickly. The need for and extent of intervention by the Ombudsman and the Legislative Committee in reviewing individual claims should be sharply reduced.

An essential ingredient in any successful appeals system is a satisfactory procedure for primary adjudication. In recent years the Board has taken significant steps to minimize the number of adverse decisions on claims before an appeal is even launched. A Claims Review Branch now scrutinizes any potentially adverse judgments on claims for benefits, often reversing a tentative rejection before the decision is even issued. However, it is not always the case that the worker is informed of the possibility that his claim may well be denied, and that he is given an opportunity to clarify the troublesome issues in his file before an initial decision is made. The suggestions which Professor Weiler made to the Board in this regard appear to be valid:

I think that the Board would be wise to modify this procedure. I do not envisage sending a formal, legal-looking notice: just a phone call, if possible, or a letter, if necessary, informing the claimant of the problem, whether it be an initial objection to the claim made by the employer on its form 7, which first informs the Board of the accident (in which case the employee need simply be sent a copy of this form), or later complications which have arisen during the course of the invstigation... Indeed, I would go even further. These are occasions when the claimant's response to this notice and inquiry will not satisfy the adjudication branch, but when past experience indicates that a full-scale hearing before an Appeals Adjudicator or an Appeal Board almost certainly looms down the road. The Board should be on the alert for cases such as these and should schedule a formal inquiry before, not after, the initial disposition. If the claimant still loses, at least he will have had an opportunity to make a case within the traditional adjudicative format. If the claimant wins, while he might be somewhat disgruntled at some delay, at least he will have

experienced first-hand a tribunal which will bend over backwards to give him every chance to make the best case possible, rather than leave him with the impression that he has had to struggle uphill to extract his benefits from a recalcitrant bureaucracy which initially denied him his "rights" without even the courtesy of a hearing." [pp. 96, 97].

If, not withstanding all these efforts at the primary adjudication stage, the claim is still rejected and the worker disputes the verdict, his appeals should still be reviewed first at the existing Appeals Adjudication level. It is important to preserve this last internal stage at which the Board may alter its earlier decision if this seems appropriate.

If a party remains unsatisfied by the verdict of the Appeals Adjudicator, under the new Act he will now have the opportunity to have external review of his case by an external and independent Appeals Tribunal. A three-person panel composed of one member drawn from labour, one member drawn from management, and an independent chairman will hold a formal hearing to inquire into the claim. The Appeals Tribunal will produce the reasons for its decisions and publish or otherwise make them publicly available.

## 12. A NEW SYSTEM OF INDEPENDENT MEDICAL REVIEW PANELS SHOULD BE ESTABLISHED

The heated contention engendered by the current practice of having medical disputes effectively decided by doctors in the direct employ of the Workers' Compensation Board is compelling evidence for the need for a review of the existing system. Although discord in this area should be mitigated by enactment of the proposed change to a wage-loss system of compensation, such a change is not likely in itself to eliminate the problem.

The essence of the controversy is described in the Weiler report as follows:

> "The briefs and presentations from almost all injured worker groups tackled this issue directly. A common refrain was that we should "abolish the Board doctors" and require the Workers' Compensation Board to accept the judgment of the claimant's own doctor. After all, so it was argued, the family doctor is most familiar with the medical history and current condition of the injured worker. Why not rely on his judgment about the status and source of his patient's present disability?
>
> Predictably, employers did not find this proposal terribly attractive (no more than would injured workers appreciate the suggestion that the verdict of the company doctor be accepted by the Board as final and binding). I believe that this proposal misconceives the nature of the issue. It is one thing to rely on a worker's own doctor to decide what kind of medical treatment is in his best interest; it is quite another thing to let him decide whether a large sum of money should be awarded to the worker from a public fund. A decision about entitlement to workers' compensation must satisfy complex statutory requirements. We want accurate and consistent rulings about these legal conditions in the flow of cases before the Board. One simply cannot delegate the effective authority to make the critical judgment under this legal program to whichever doctor a claimant happens to select. Instead the Board uses its own staff doctors for this purpose, doctors who are independent of either of the parties, and who develop the experience and perspective which comes from analyzing thousands of such compensation claims year after year.
>
> This does not solve the problem of how to restore confidence and finality in this most contentious area of the Board's work. Consistent with the

> position I articulated earlier about the general problem of appeals in workers' compenstion, a solution to this dilemma naturally suggests itself. For appeals which turn on specifically medial issues there should be a Medical Review Panel, composed of sufficiently eminent specialists to provide an unimpeachable verdict." [pp. 119-120]

The new Act provides for a system of independent Medical Review Panels, composed of prominent specialists to provide the medical findings which are critical for many of the most contentious of workers' compensation claims.

The Lieutenant Governor-in-Council will appoint qualified specialists to rosters in each area of specialization. Each Medical Review Panel (MRP) will be composed of three members appointed from the relevant roster. One member will be selected by the employee, a second will be selected by the employer, and these two members will select a third. However, no member of the panel may have any previous involvement in the case.

The entitlement to an MRP will be a matter of right for either the worker or employer party to a claim, provided that the party's doctor provides written certification of an essential medical dispute to be resolved. Ordinarily entitlement to an MRP will take effect only after an opinion has been issued by an Appeals Adjudicator. However, the Board itself will also have the discretion to initiate an MRP through the Appeals Tribunal.

The role of an MRP will be limited to medical rather than historical, legal, or policy questions. Non-medical facts will be provided, and specific medical questions will be submitted to each MRP by the Appeals Tribunal, these questions having been previously communiated to the parties for their comments and objections.

The procedure to be followed by an MRP will be medical, rather than adversarial or adjudicative. This procedure will include physical examination of the injured worker, but the Panel will be empowered to carry out any further medical inquiries and investiations which it considers necessary.

The findings of an MRP will be deemed final and binding as to the medical questions referred to it. The only exception to this principle should be cases in which significant, fresh medical evidence emerges after the MRP decision has been rendered.

The costs of an MRP will be paid initially by the Ministry of Labour, which will in turn bill them to the Board.

**ILLUSTRATION:**

A worker suffers a back injury which he contends is work-related. Under the existing system he first consults his family doctor, who examines him and then reports to the Board that his patient is eligible for compensation. The worker assumes that the Board's claims adjudicators will confirm this eligibility assessment.

The adjudicator who reviews the claim verifies that it is complete, and looks for professional (i.e., a physician's) confirmation of the nature and extent of the disability as well as its eligibility for compensation under the provisions of the current legislation. If there is any doubt about these points — raised either by the employer or the adjudicator's own perusal of the file — doctors employed by the Board are consulted for a further medical opinion on the disability. Although the occurrence, extent, cause, and degree of impairment produced by "invisible" injuries such as back injuries are difficult to determine, the opinion of the Board doctors on these matters is often central to the rejection of a claim.

The worker and his family doctor may well contest a Board doctor's opinion. The current mechanism for doing so consists of lodging an appeal before an Appeals Adjudicator; the claim may later be passed on or appealed to an Appeal Board. Additional evidence may be submitted by the employee, and the decicion-makers in the appeal may request further examination and opinions from Board doctors or outside consultants. This process of obtaining additional examinations and opinions may continue up through the levels of the Ombudsman and the Select Committee. The individuals who must make the final decision on the claim must contend with conflicting medical guidance, and the worker is often left with diminished confidence in the effectiveness, and justness, of the system.

Under the new system the worker will be informed of any difficulties in his file; his help (and, if appropriate, that of his family physician) will be enlisted; and, if necessary, a formal inquiry will be conducted, all before the initial adverse disposition of a claim.

If an appeal is initiated, whether before or after a decision is made by an Appeals Adjudicator, an MRP may be requested. If so the requesting party's doctor will provide a certificate stating his opinion that there is a critical medical dispute and defining the dispute.

Within 30 days, the Appeals Tribunal will give the employer and the worker 10 days to nominate an independent specialist from a designated roster. These two members will then have 15 days to select a third, who will be the chairman.

The Appeals Tribunal will also prepare a list of medical questions to be resolved by an MRP, and will send them to the parties for review and comment.

The MRP will then conduct its inquiry, with the power to gather additional information and opinions which will also be disclosed to the parties. The inquiry will include an invitation for representations from the doctor who certified the need for the MRP.

After all these steps — aimed at ensuring quality and confidence in the result — have been taken, the Medical Review Panel will make a final decision, although the parties may submit comments on that decision, and the Appeals Tribunal may request a response to these from the MRP.

The procedure outlined above should ensure that the MRP will provide the laymen serving on the Appeals Tribunal with clear and authoritative answers to the medical questions in dispute.

## 13. A NEW CORPORATE BOARD WITH OUTSIDE DIRECTORS SHOULD BE ESTABLISHED.

A reconstituted Corporate Board is needed to provide for constructive external participation, not only by employers and workers but by informed members of the public.

The purpose of such a decision-making body is described in the Weiler report:

> "Just as the outside community should be brought into the appeal system, it must be involved in the development of general policy for the Workers' Compensation Board. The way to do this is not through a body such as the current Joint Consultative Committee — a large, external, and purely advisory group. These outside directors should be part of the ruling organ of the Board, and forced to take major responsibility for the judgments that they make. Through this vehicle the Board executives will learn first-hand what their clientele is thinking and seeking. It should also help teach these outside interest groups something of the difficult real-life compromises which are necessary among the competing ideals in compensation." [p. 130]

The existing Corporate Board is composed of the Board's Chairman, the Vice-Chairman of Administration, the Vice-Chairman of Appeals, and four Commissioners of Appeals.

The new Act provides for a Corporate Board with an executive core and a number of outside directors, on the model of the Board of Directors of a major public or private corporation.

The executive core will be composed of the Chairman of the Workers' Compensation Board, the Vice-Chairman of Administration, and the Chairman of the new Appeals Tribunal. They will be joined by outside directors with demonstrated experience in and understanding of workers' compensation; these directors will be drawn from the ranks of labour, management, medicine, vocational rehabilitation, occupational health and safety, and the economics of income maintenance.

The new Board will be given support by a new policy planning secretariat attached directly to the Board, created to carry out empirical research and sustained policy analysis.

**ILLUSTRATION:**

Under the existing Act, although the Board has been moving towards a more sophisticated approach, policy-making at the Board is an in-house procedure. It depends heavily upon individuals who have considerable experience with the problems of the compensation system, but whose administrative responsibilities severely restrict the time available to them for reflection on future directions of the program as a whole and for seeing that the necessary strategic planning is carried out.

Under the new Act a policy planning secretariat will be created to enable the new Corporate Board to analyse specific problems, to solicit recommendations from the experienced staff of the Board, and to keep abreast of alternatives being proposed or administered in other provincial or national jurisdictions.

The Board will be in a position to issue discussion papers on contentious policy issues detailing its tentative conclusions and inviting reactions from the public. The outside directors serving on the Board should be well-positioned to stimulate dialogue between the various constituencies in the workers' compensation system and the Board itself.

When all discussion is concluded, the Board will issue a statement detailing the policy objective and the means by which it is to be achieved. Later, implementation of the policy will be monitored by the Corporate Board, and the results of research on its effects will be published.

## 14. THE OFFICE OF THE WORKER ADVISER SHOULD BE EXPANDED AND MADE INDEPENDENT OF THE BOARD

The need of workers' compensation claimants for representation and assistance is well established. The Board itself now employs three Worker Advisers to assist workers with their claims and to represent the worker in an appeal hearing if this is necessary.

Although the claimant has a right to legal counsel or to representation through his trade union or an injured workers' organization, such representation is not and should not be a necessity.

Professor Weiler reported on this as follows:

> "In 1979 Worker Advisers dealt with 1,666 requests for assistance, conducted 1,337 interviews of claimants, and attended 226 Appeals Adjudicator hearings and 528 Appeal Board hearings on behalf of the claimant. Of the appeals in which the Advisor was involved, 131 were allowed by the Appeals Adjudicator and 107 rejected, while 221 were allowed by the Appeal Board and 277 rejected. In addition to this 50% success rate at the formal appeal stage, the Advisors took 37 cases back to the claims adjudication branch with new material, of which 32 were allowed, and another ten cases back to the rehabilitation branch, of which six were allowed.
>
> I heard some comments — not surprisingly from trade unions, injured worker groups, et al. — that the Worker Advisers were not useful instruments, because they suffer from an inherent conflict of interest between the injured worker whom they represent and their employer, the Board, whom they are challenging. The suggestion was made that the institution be dismantled and the money saved used to finance private efforts at representing compensation claimants. The figures quoted may be a sufficient answer to this suggestion. In my view, the office of the Worker Adviser should be expanded and made more accessible, rather than contracted. But to meet the objection, the institution should be revised in accordance with the general principles which I have formulated for administration of workers' compensation." [p. 124]

The new Act provides that the Office of the Worker Adviser will be transferred to the Ministry of Labour. The Ministry will select, pay, supervise and provide office space for the Advisers, with all costs charged to the Workers' Compensation Board.

**ILLUSTRATION:**

Under both the existing Act and the New Act a claimant experiencing difficulties with the system will be able to enlist a Worker Adviser to provide assistance at the various appeal levels.

The fact that the assistance is provided by the same organization whose decision he is disputing, under the current system, sometimes diminishes the confidence of a claimant in his representative — particularly if he is making use of this service at the appeals level. Relocating the Worker Adviser in the Ministry of Labour should significantly reassure the claimant that he has been fairly represented, even if the final decision on his case is adverse to his claim.

## 15. A NEW OFFICE OF THE EMPLOYER ADVISER SHOULD BE ESTABLISHED TO BE INDEPENDENT OF THE BOARD

There are no Employer Advisers under the existing system, although they would be of evident value, particularly to small businessmen.

At present, employers — or any other party or representative, such as trade unions or legal counsel — may obtain information and technical assistance by calling a Counselling Specialist in the Claims Information and Counselling Services Branch; however, no Board service is available to represent the employer at the appeals level. Moreover, the small businessman has no access to the impressive network of union and community legal service representation which is available to injured workers.

The new Act therefore provides that an Office of the Employer Adviser be created with a mandate similar to that of the Worker Adviser. This Office will be established in the Ministry of Labour — separate from the Worker Adviser — and the Ministry will select, pay, supervise and house the Employer Advisers, with all costs charged to the Workers' Compensation Board.

**ILLUSTRATION:**

Under both the existing Act and the new Act an employer experiencing difficulties with the system is able to obtain information from a Counselling Specialist. The new legislation provides employers with the additional assistance of an Employer Adviser.

Particularly in view of the proposed mandatory experience rating of individual firms, an employer who wishes to lodge an appeal may seek not only information but also representation. Small businessmen are now faced with the unpleasant choice of retaining expensive legal counsel or attempting to represent themselves.

Under the new Act the Employer Adviser will be available to assist and represent this small businessman. Just as in the parallel Office of the Worker Adviser, locating this service outside the Board should serve to increase the employer's confidence that he has been fairly represented, even if the final decision on his case is adverse to his position.

**16. FULL ACCESS TO CLAIM RECORDS SHOULD BE MADE AVAILABLE TO THE EMPLOYEE AND HIS REPRESENTATIVE; THE EMPLOYER AND HIS REPRESENTATIVE SHOULD BE GRANTED ACCESS TO THOSE RECORDS DEEMED RELEVANT BY THE BOARD IN CASES WHERE THE EMPLOYER CONTESTS EITHER AN APPLICATION FOR COMPENSATION OR HIS ACCOUNTABILITY FOR COSTS.**

The changes in the administration of workers' compensation presented up to this point will permit greater participation by the parties in difficult cases at the primary adjudication stage, will establish external appeal bodies to review decisions made by the Board, and will provide advice and representation to both workers and employers who must deal with the system. Each of these reforms depends for its success on the accuracy and the availability of the information contained in the Board's case files. Under current procedures neither party to a case has full access to this information in order to check its reliability, although there has been a movement to fuller disclosure in recent years.

At present, the Board prepares for the parties summaries of all reports and documents in the claim file. In addition, the Board provides access to its files to a party's representative, but not directly to the employer or employee. Furthermore, the representative must sign an undertaking not to disclose the contents of the file to the party whom he represented.

The primary justifications offered for the existence of such rigorous confidentiality practices are (1) humanitarian concern for the worker (e.g., cases in which the family doctor has diagnosed a fatal condition but does not yet feel that the patient should be informed of it); and (2) the need to elicit frank reports from physicians, co-workers and other sources on the nature, origin, and current status of a worker's disability. The issue of premature disclosure of medical information to the worker can readily be resolved through cooperation with the worker's doctor. As for the problem of procuring candid statements about a worker's condition, Professor Weiler makes the following point:

> "The Board now provides summaries of the reports in its files. It shows the entire file to the worker's representative. This material is bandied about in hearings of contested claims attended by the injured worker and often by his employer. Ultimately the Appeal Board renders a written decision with reasons referring to as much of the material as is relevant. Among those observers with whom I discussed this matter, there was a consensus that it

did not take a particularly astute claimant to identify any outside source of damaging informtion. Thus the current halfway disclosure policy gives the Board the worst of both worlds. The Board's practice already generates enough leakage to have the impact it fears upon doctors and others who might worry about disclosure (a step that was taken in Quebec for all compensation appeals since January, 1980)." [p. 128].

As a matter of equity and natural justice this full disclosure should be extended to the employer as well as the employee. To meet concerns about the violation of the confidentiality of private personal information, however, disclosure to employers will be limited to contested cases, and the Board will have the discretion to screen these requests to ensure that only material directly pertinent to the issue in dispute is disclosed.

The new Act thus provides that copies of the claim files, including medical reports and opinions, be provided on request to the claimant or his representative, and that relevant informtion in contested cases be made available to the employer or his representative. Moreover, the Board will notify the claimant or his representative of the information to be disclosed to the employer. Either party may appeal the Board's decision in this regard.

**ILLUSTRATION:**

A worker suffers a back injury, claiming that it occurred on the job with his present employer. The employer contests the claim, casting doubt on whether the injury was in fact related in whole or in part to the worker's current employment.

Under the current system neither the worker nor the employer sees the actual reports in the claim file. The representative of these parties are allowed to see the reports — even to take notes while looking at them — but cannot photocopy them or reveal their contents to the parties, who must settle for summaries of the file's contents.

It is easy to understand how the party aggrieved by a decision may conclude that the adjudicator or Appeal Board erred and, in the absence of bias, must have done so on the basis of information which was not disclosed. Without access to that information, how can the party be entirely satisfied with the initial verdict? And yet, if a further appeal is to be made, on what materials can it be founded?

Under the new system the worker will be able not only to see the reports in the file, but also to request that copies be provided to him. The employer contesting the claim will have access to the same reports to the extent that they are relevant. In the back injury case in this illustration, the worker may find that a medical report does not include the results of tests he remembers undergoing. The employer, on the other hand, might discover information about the worker's previous employment which could form reasonable grounds for appeal or which would correct an erroneous impression held by the employer, thus reconciling him to the legitimacy of the claim.

## 17. A MANDATORY EXPERIENCE-RATING PLAN FOR INDIVIDUAL EMPLOYERS SHOULD BE INSTITUTED

Workers' compensation is financed entirely by employers who do business in the province. Employers* are placed into one of 108 "rating groups". The Board's actuaries then calculate the assessment required from each group of employers, based on the projected number and cost of claims likely to arise. These assessments are expressed as rates of, say, $1.65 per $100 payroll; all employers in a rating group must pay the same assessment rate.

During Weiler's hearings, many employers requested that a system of mandatory individual experience rating be introduced, whereby the Board would calculate the accident and compensation experience of the individual employer, and would vary as an individual firm's assessment according to this record, through a system of surcharges or refunds.

Weiler cautions, however, that the adoption of such a plan "may generate further contention and litigation under the statute, not so much about the application of more complex rating formulas as about individual claims whose validity employers may be more inclined to contest because of the immediate impact on their own costs". [p. 84] He notes, however, that there is already a "modest" experience-rating plan operating under the current Act; this plan is voluntary in the sense that it comes into effect only when chosen by the majority of employers in a rating group. Weiler found no evidence that there was more dispute over claims associated with employers who are already partly or wholly accountable for the costs of each claim than with firms who are not part of the experience-rating scheme.

> "The justification offered for such a plan is obvious: the reduction of industrial accidents... [Under the current system], those firms who are cavalier about occupational health and safety, who may be tempted to save money at the risk of their employee's well-being, will share equally in the benefits of safety investments made by their competitors... An individual experience rating plan can be the instrument through which workers' compensation may be modified towards a fairer allocation of the costs of industrial accidents

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* i.e., Schedule 1 employers, who are most of the employers in the province. Schedule 2 employers do not participate in the collective liability scheme. Thus, they are, by definition, individually "experience rated".

among employers as a group. Presumably, it will also provide business with a structure of incentives which favour, rather than hinder, investment in accident prevention and vocational rehabilitation." [pp. 83-84]

He concludes, "I firmly recommend that individual experience rating now be made the rule rather than the exception in Ontario workers' compensation." [p. 85]

The proposed new experience-rating plan refunds or charges (as the case may be) half the difference between 60% of the average assessment due to the Board in the last three years and 100% of the average value of benefits awarded to the firm's employees in the last three years. There are also provisions for restriction of the maximum charges in order to ensure that firms are not subject to sudden cost increases which could unduly affect their financial viability, and for reviews every three years so that changes which will improve the scheme can be made on a regular basis.

**ILLUSTRATION:**

The following table shows how a firm would have its experience-rated refund calculated under the new system. Data are from the three years 1979 through 1981.

| Year | Assessment rate per $100 payroll | Assessable payroll | Assessment | Value of benefits awarded |
|---|---|---|---|---|
| 1979 | $7.00 | $5 million | $350,000 | $100,000 |
| 1980 | 6.95 | 6 million | 417,000 | 300,000 |
| 1981 | 7.25 | 7 million | 507,000 | 150,000 |
| 3-year totals | | | $1,274,500 | $550,000 |
| 3-year average | | | 424,833 | 183,333 |
| 60% of 3-year average | | | 254,900 | |

Thus, a refund of $35,783 (i.e., one-half of $254,900 minus $183,333) would be payable to the company.

## 18. A WORKER SHOULD ACCEPT AVAILABLE WORK DEEMED SUITABLE BY THE BOARD, OR LOSE EQUIVALENT COMPENSATION

An earlier proposal (#2) requires that employees receive 90% of previous net income in temporary compensation benefits. This high level may, in some instances, constitute a powerful incentive to not return to work after an injury has healed:

> "Many of the jobs to which injured workers must return, or which they must find, are not very attractive. I have mentioned the pain, the personal disruption, and the retooling of skills which may confront the disabled worker. The fact that for every dollar earned from that effort, he must give up a guaranteed 90 cents in compensation benefits definitely presents an incentive problem which has to be faced....
>
> There is a simple and direct response to this problem. The Workers' Compensation Board should be empowered to determine whether the disabled worker is capable of doing suitable work, whether that work is available to him, and whether he has refused to take such a job. If the response to these questions is positive, the Board will deem that the worker has earned the income payable in this job for purposes of calculating the actual wage loss from his injury. Such a judgment by the Board would require a tangible indication that suitable work was in fact available to this worker, presumably through evidence that the employer, the Board, or some other agency had made a specific job offer to him. As well, if a worker refused to take the job, which might be a minimum-wage, low paying and low-status job as a night watchman, this would not cause complete loss of his compensation benefit, which may have been based on skilled construction tradesmen wages. It would mean only that the claimant would have docked from his total workers' compensation benefit the amount of earnings by which he might have mitigated his actual wage loss." [pp. 61-62]

**ILLUSTRATION:**

A $20,000-a-year construction electrician sustains a back injury, resulting in a 25% disability rating after rehabilitation. Under the existing Act his disability pension will continue regardless of offers or acceptance of future work.

He is later offered a job on a construction site as a signalman, for $12,000 a year. Under the new Act, if he refuses this work, the net income which he would have earned from this job would then be deducted from his pre-accident income, and 90% of the net difference would be paid to the worker. Note that the Board must be able to verify that the job was available to him had he wanted it, and that he was capable of performing it.

**19. A WORKER SHOULD HAVE THE RIGHT TO RETURN TO HIS OLD JOB, IF HE IS ABLE; AND IF HE IS NO LONGER CAPABLE OF PERFORMING THAT JOB, HE SHOULD HAVE A LIMITED RIGHT TO ANOTHER SUITABLE JOB IN THE SAME ENTERPRISE**

An employee who is injured on the job and receives compensation benefits for that injury under the existing Act enjoys no statutory right to re-employment. Yet the need to secure jobs for injured workers is too significant to remain unaddressed by the legislation. One solution to the problem is to mandate re-employment with the employer at the time of injury, insofar as this is reasonably possible.

Professor Weiler reports that

> "[most] collective agreements (although by no means all of them) now provide such a right of recall. Non-union employees must rely on the discretion of their employer, who might well prefer to retain a replacement. I believe that, in fairness, the interest of the injured employee, who may have invested a good part of his working life in acquiring seniority in an enterprise, but who became a casualty of the operation, should take priority over the expectations of a person newly hired to fill that vacancy. (In fact, a considerably stronger argument can be made for this principle in the present context that in the case of striking employees who now enjoy such statutory priority over their replacements).
>
> What of the situation in which the injured worker has recovered, can perform suitable work, and his employer at the time of the injury has such work available? The logic of my argument implies that there should be some statutory right of recall in this case. The employee has been injured in the service of this employer. He may have invested a large part of his working life in the firm. Even if he should find another job, he would not enjoy the security and amenities which come from lengthy seniority. And to find another such job, he may have to sell his house, uproot his family from their friends and schools, and move to another locality." [pp. 65-66]

Further:

> "Suppose that there is such a job in this plant, but it is filled by an incumbent worker whose length of service with the employer is much less than that of the injured worker (perhaps even post-dating the injury). Why shouldn't the injured worker have a

> right to bump the junior employee out of that job if it is the only suitable work available with the firm? Many businesses — at least those covered by collective agreements — now give senior employees such a right in the event of a layoff. Is not the need and the equitable claim even more compelling in the case of an occupational injury and permanent disability? The union leaders to whom I spoke about this problem were prepared to concede that if such a statutory seniority and bumping right were inserted in a Workers' Compensation Act, it should override special forms of departmental or job progression seniority established in their collective agreements." [p. 66]

The new Act provides that a worker with a minimum of one year of service with an employer has a post-injury right of return to that job within two years.

If the worker is not capable of again performing his original job, he shall have a right of refusal on suitable vacant jobs with that employer.

If the worker has a minimum of ten years of service with an employer, he shall have "bumping" rights for a sutiable job held by another worker with less than one year of service.

**ILLUSTRATION:**

> A worker is injured on the job after four years of service. He receives compensation benefits for his injury, and after eight months of absence from work, he is fully recovered. During that time his employer has hired a replacement worker, who is performing satisfactorily on the job. Under the existing Act the injured worker has no right of reinstatement in his old job, and the employer has no incentive to re-employ him. Under the new Act this employee will have the right to return to his previous job.
>
> As a further complication, let us assume that this worker is permanently incapacitated to a limited degree by his on-the-job injury. If his previous job involved heavy lifting, he might be fit to return to work, but not to his previous job.

Under the existing Act the worker's chance of being rehired by his original employer for some other job which he would be capable of performing would depend upon the goodwill of that employer. Under the proposed Act the worker's re-employment would be legally assured to the extent that if a job opened up with his previous employer, and if the worker were capable of performing that job, the employer would be required to offer it to him.

If this permanently partially disabled worker had ten years of service with the employer, under the new Act he would be assured of a job offer from his previous employer if that employer had any job which the injured worker could perform which was held by a worker with less than one year of service.

**20. AN EMPLOYER SHOULD OFFER RE-EMPLOYMENT TO AN INJURED WORKER IF SUITABLE WORK IS DEEMED TO BE AVAILABLE BY THE BOARD, OR FACE INCREASED ASSESSMENT COSTS.**

If the employer is required by statute to offer suitable work, the question of how to put this obligation into effect arises.

Disagreements may occur over what constitutes available work. The logical arbiter is the Workers' Compensation Board.

If the employer refuses to offer suitable and available jobs to its disabled workers, it should have to pay for the additional wage loss thereby incurred by these workers. This will ensure that the other employers in the same rating group who are cooperating with the Board's vocational rehabilitation program are not made to subsidize the recalcitrant employer through an increase in their general assessment rate.

The new Act thus provides that the workers' compensation assessment of the uncooperative individual employer be increased by an amount equal to what the Board deems to be the resulting loss of earnings by the worker.

**ILLUSTRATION:**

An injured worker is permanently partially disabled, unable to perform his original job. Under the new Act he has a right to be offered another job which is vacant and which he is capable of performing. The employer, however, considers this injured worker incapable of performing a now-vacant job, and refuses to offer it to him. In this case the worker (or employer) would ask the Board to settle the disagreement.

If the Board agrees with the employee's opinion of his capabilities vis-a-vis the demands of the vacant job but the employer still refuses to rehire him, the employee will continue to receive compensation benefits of 90% of his net wage loss. The employer, however, will be charged each month with an additional assessment to cover 90% of the net monthly pay which the employee would have received in the new position. This supplementary payment is designed to relieve the compensation system of the burden of the employer's recalcitrance, in precisely the same way that the employee is required to accept offered employment or have his benefits docked (see #18).

## 21. EMPLOYMENT DISCRIMINATION FOR SEEKING AND/OR RECEIVING BENEFITS UNDER THIS ACT SHOULD BE PROHIBITED

Employment discrimination against injured workers is a practice which some feel might become more common as employers are granted greater access to claims files.

Professor Weiler believes that

> "the Workers' Compensation Act should contain an explicit prohibition against and an effective remedy for discrimination in employment simply because someone has been awarded workers' compensation benefits. I do not mean to suggest that it is illegitimate, a priori, for an employer to want to know whether an employee has been injured at work and/or is still suffering from a disability. But it is improper — and it should be illegal — to penalize an employee for having exercised his statutory right to file for compensation, or to refuse to hire an employee because he once received compensation benefits for an injury which either has left no disability, or, in any event, cannot affect his performance on the job in question." [p. 64]

In fact, it is the view of the Government that the proposed new Human Rights Code does extend such protection. To the extent that it may be necessary, the justification for this protection is explicitly restated in this White Paper. In light of the applicable provisions in the proposed Code, no additional ban on this one kind of employment discrimination has been included in the draft Workers' Compensation Act, attached. Should future interpretation of the Human Rights Code reveal that such protection is absent or inadequate, appropriate remedial legislative action will be taken.

## COSTS

The cost of the proposals outlined in this Paper is central to any public discussion of a revised system. Indeed, many of those who responded to Professor Weiler's report placed great emphasis on the necessity for full disclosure of any projected estimates of the costs of the new program.

This section provides a description of the cost material developed by the Board as well as of the methods used to obtain it. The cost of new accidents expected to occur in 1981 was estimated, both under the proposed system and under the existing scheme. These estimates were developed by the Board's Staff Actuary, and were confirmed by the Wyatt Company, which was retained by the Ministry to provide an independent actuarial review. The reports of both the Staff Actuary and the Wyatt Company are attached as Appendix II.

It is a complex task to estimate future costs for a system such as workers' compensation, because precise projections must be made about such matters as the nature of claims likely to arise, future inflation adjustments, the earnings of the Board's investment portfolio, and so on. This complexity is compounded when such estimates must incorporate the package of innovations presented in this paper. In many instances, no precedent exists under the current system. A case in point is that of wage-loss benefits, as described in proposal #3 above. Periodic payments to permanently disabled workers are to be awarded only where wages are actually lost due to impairment. No data exists on the probable extent of such losses, so it was necessary for the Board to undertake a survey of recently disabled pensioners to determine the average extent of earnings losses.

A variety of other assumptions had to be made to permit a projection of the costs of the new system: that workers' reported earnings would equal their actual earnings; that they would disclose their true number of dependants for the purposes of calculating net income; that workers in receipt of permanent pensions would not change their behaviour to resist promotion or overtime work and thereby forego additional compensation benefits.

Yet, despite the number and nature of assumptions necessary in an exercise of this sort, the Board is confident that the results obtained represent the best possible estimate of probable costs. These results were affirmed by the external actuary investigating the methods used by the Board.

Table 1 summarizes these cost results for compensable accidents expected to be incurred in 1981. Three cost totals are presented for the sake of comparison: the cost of the current Act if existing benefit levels and ceilings are frozen (column 1), the cost of the current Act with the added assumption of periodic inflation adjustments (column 2), and the cost of the new system (column 3).

The first set of estimates (column 1) was prepared to establish the Board's proposed 1981 assessment rates and was supported by Eckler, Brown, Segal and Co. Ltd., the Board's consulting actuaries. The assessment rates emerging from this calculation are now in force for 1981. Yet because the Board and its actuarial advisers have considered it inappropriate to anticipate future legislation, column 1 figures make no allowance for a continuation of the current ad hoc practice of increasing the earnings ceiling and benefits. From a practical, historical perspective, though, this is clearly an artificial assumption. Existing pensions are regularly adjusted by the Legislature, and employers eventually pay the cost of this through their assessments. Thus, the cost estimate in column 1 is not a realistic base from which to compare the current system with the new one.

For this reason the figures contained in column 2 were prepared by the Board Actuary. They are based on the benefit structure contained in the current Act. However, they also reflect the assumption that future payments for pensions awarded under this Act would be adjusted annually to allow for price inflation, and also that the minimum and maximum levels would be adjusted annually in light of changing wage levels in the province. For the latter purpose the Actuary simply used the same criteria adopted in the four ad hoc adjustments from 1974 through 1979. In sum, the figures in column 2 represent the best estimate of what would be the eventual cost of claims made in 1981 under the current Act.

Turning now to the new system and the figures contained in column 3, it was necessary to make a number of precise assumptions about how the major revisions would operate. Following are the crucial actuarial definitions and methods:

1. Maximum Earnings of 250% of Average Industrial Wage (Ontario)

The proposal to increase the ceiling for maximum average earnings to 250% of the average industrial wage for Ontario yields a maximum of $40,000 in 1981. Consistent with prior practice, each year's maximum is assumed to apply to accidents occurring in that year and

Table 1

COST ESTIMATES OF SCHEDULE 1 1981 ACCIDENTS

($ Million)

| | CURRENT ACT | | NEW ACT | Net Incremental Cost of NEW ACT Provisions |
|---|---|---|---|---|
| | Assuming no Allowance For Future Benefit/ Ceiling Increases | Assuming Allowance For Future Benefit/Ceiling Increases; Ceiling of $21,200 as of Jan. 1, 1981 | | |
| | (1) | (2) | (3) | (4) |
| (A) Temporary | $215 | $250 | $273 | $ 23 |
| (B) Permanent | 113 | 254 | 241 | -13 |
| (C) Survivor | 12 | 30 | 42 | 12 |
| (D) Medical Aid | 86 | 86 | 86 | 0 |
| | $426 | $620 | $642 | $22 |

to temporary compensation based upon recurrences during that year.

2. Wage Loss

Under this proposal the current system of awarding permanently disabled claimants a pension based upon impairment of earnings capacity is replaced by a system under which payments are based upon wage loss and where current earnings may include deemed income for those workers who do not take work that is both suitable and available to them.

Included as well under this heading is a conversion of survivor benefits from the current flat amount to amounts based on the deceased worker's prior earnings and adjusted in light of such criteria as the age of the spouse and the presence of children. Since calculation of the actual wages lost by permanently disabled claimants is not routinely required under the existing program, new information was required to evaluate this proposal. A survey was undertaken in August, 1980, of claimants then being evaluated for permanent disability. The results of this survey indicate that total payments for permanent disability under the two systems will be almost the same.

3. C.P.P. Offset

Under this proposal, the current plan's failure to recognize that C.P.P. benefits are paid to permanently disabled workers and to survivors is rectified by the inclusion of an offset for C.P.P.

The C.P.P. offsets to permanent disability benefits require a somewhat arbitrary judgment, due to the lack of data and of guidelines for determining if a claimant's C.P.P. disability pension should be recognized. Thus, the actuaries have assumed that the wage-loss estimate includes provision for a C.P.P. offset, and that the program's permanent total disability cost would increase by 4% if the C.P.P. offset were not present.

For survivor benefits, the situation is much clearer. Subject to eligibility rules related to C.P.P. contributions, all beneficiaries are entitled to C.P.P. benefits. Thus, after allowing for such items as the benefit maximum, a C.P.P. offset reduces survivor benefits by 20% (although, overall, these benefits are significantly improved by other facets of the new program).

4. 90% Net

Under this proposal, total disability benefits will be converted to 90% of net wages where, on an annual basis, net wages are set at:

(a) Gross wage

LESS

(b) Federal and provincial taxes on (a)*.

LESS

(c) Employee C.P.P. contributions

LESS

(d) Employee U.I.C. contributions.

For permanent partial disability the same approach has been taken except that the 90% is applied to:

(a) The net of the inflation-adjusted, pre-accident gross average wage

LESS

(b) The net of the current actual/deemed gross average wage.

For surviving spouses of 1981 fatalities, the same approach has been taken as was for total disability, except that the 90% is replaced with 75% in cases were there are no dependent children.

In addition, allowance is made for the set minimum of 50% of the average industrial wage for Ontario.

5. Retirement Benefits

Under this proposal the annual benefits available from age 65 are assumed to be 1/40th of adjusted benefits (excluding any lump sum) received betwen the first anniversary of the claimant's accident and attainment of age 65. In this regard, an adjusted benefit equals:

(a) Actual benefit received

TIMES

(b) The product of each of the inflation adjustment factors used in each of the years following the year of payment.

---

* Computation of taxes includes allowance for the claimant's family members, all of whom are assumed to give rise to the exemption available for family members whose net income is zero.

In this way the claimant will receive the equivalent of the benefits provided by the most generous registered pension plans allowed under Canadian Legislation, i.e., the 2% Final Average Earnings plans with annual post-retirement adjustments and no offset for C.P.P. Thus, this proposal not only make up for all lost C.P.P. retirement income, but also matches the most generous benefit available from registered pension plans.

An analysis of new permanent disability awards made during 1980 shows that the average age at the date of award, weighted by amount of pension, was 47. Thus it is appropriate to assume that the average claimant will incur a 50% reduction in benefit at age 65.

6. Lump Sums

Under this proposal, a lump sum based on 2.5 times the average industrial wage in Ontario is paid to each surviving spouse and to each permanently disabled claimant, the latter in proportion to the degree of disability as determined from the "permanent disability rating schedule" -- adjusted in each case for the worker's or spouse's age.

7. Fringe Benefits (Other Than Retirement Benefits)

Due to the uncertainty about how to compensate for fringe benefits, and the fact that the employer will be required to maintain fringe benefits for a certain period (as many of them do even now), the fringe benefit proposal -- with the important exception of pension contributions -- has not been included in these cost estimates.

In the final analysis, the relevant cost comparison is between the figures in columns 2 and 3, the cost of 1981 accidents under the current Act (assuming future inflation adjustments) versus the cost of the new system as applied to this same population of claims. The new scheme would cost $642 million in benefits this year versus $620 million for the current Act. This $22 million additional cost is not insubstantial; but, to put it in perspective, it represents only a 3.5% increase in current benefit payments. In the Staff Actuary's view, this means that the projected costs of the new Act are essentially of the same magnitude as the estimate for the current program: "The costs in respect of compensable accidents expected to be incurred in 1981 are substantially of the same order [as those under the current system]... The relative costs of 1981 accidents may be imputed to accidents expected to be incurred in the years following 1981 although the potential for divergence due to numerous factors increases as one goes further into the future". (Opinion of the W.C.B. Staff Actuary, attached).

It was mentioned earlier that an independent actuarial firm (The Wyatt Co.) had confirmed the methods used in arriving at these estimates and the figures generated by them. Their conclusions follow:

OUR OPINION

In our opinion the methods, assumptions and data used to make the actuarial evaluation are adequate and sufficient to the purpose, and the results of that evaluation are reliable and we concur with the opinion of the Staff Actuary as presented in his report, subject to the following comments.

Indexing of Pensions in Course of Payment.

The indexing of pensions in course of payment is evaluated on the assumption that, on average, in the long-term, investment return on invested assets exceeds the adopted price index by 2% per annum. For this purpose it is not significant whether the index is the Consumer Price Index (All Items - Canada) or the Gross National Expenditure Implicit Price Deflator for personal consumption expenditures.

The assumption of a 2% net real rate of return is, in general, acceptable in the context of historical relationships over the long term and also by reference to economic fundamentals.

Nevertheless, the Board, like many fixed-income funds, has not achieved such a net real rate of return over the ten years ending December 31, 1980 or even over the thirty years ending December 31, 1980. This issue does not directly relate to the Board's fixed-income habitat for investment purposes, but reflects the impact of unanticipated increases in the rate of inflation.

The assumption of a 2% net real rate of return constitutes a reasonable expectation but it is exposed to a sequence of unanticipated increases in the rate of inflation. It is not our objective to consider that the unsatisfactory investment outcomes for a fund having fixed-income securities is mirrored by a gain to those sectors of the economy which issue such securities. We also think it is not useful to expect that a substantial fund should move out of deteriorating securities in advance of other financial market participants.

We, therefore, conclude that the desired objective of a 2% real rate of return does impose considerable requirements upon the Board and that the fund should have the broader investment power needed to cope with such requirements. Given this, we consider the assumption to be a sound actuarial assumption for the long term assessment of the proposals. (The Wyatt Co., Report to the Ministry of Labour Concerning Costs for Compensable Accidents Pursuant to "Reshaping Workers' Compensation for Ontario,", p. 5).

## EXISTING CLAIMS

This paper has been produced in response to Professor Paul Weiler's first report, entitled "Reshaping Workers' Compensation for Ontario". That report contained recommendations for a new Act to cover new claims, and the Government has taken steps to translate these recommendations into a draft Bill reflecting these changes.

However, still unresolved is the problem of how to treat workers whose injuries occurred under the existing Act, tens of thousands of whom have already been awarded term disability benefits by the Board. Professor Weiler dealt with this only in passing:

> "These proposals for adjustment of pension benefits to inflation, like the other recommendations in this chapter, are put forward as the model for fair and sound disposition of future compensation claims. No attention was paid in the course of my Inquiry to the question of which if any of these proposals is to be applied retroactively into existing pensions. I have not worked out in my own mind a detailed blueprint for the transition in the new system, if and to the extent that this is to be the will of the Legislature. On the other hand, some issues, particularly that of inflation adjustment, cannot be avoided. Nor is there any entirely happy way to treat the problem. One of the strands of my argument in this chapter is that periodic pensions should be confined by the Board to those those cases in which there is an actual wage loss; inter alia in order to make the task of inflation adjustment more manageable and less threatening. But the vast majority of existing Board pensions are now paid to people who are fully back at work (or who are receiving disability pensions or retirement income). On the other hand, these pensions were awarded under a legal framework which gave no guarantee of protection against future inflation. My own inclination is to follow the lead of Saskatchewan on this issue, and to confine the right to inflation adjustments to those existing pensioners who come forward to establish that they are suffering an actual loss of net disposable income according to the criteria for the new structure of benefits." [pp. 76-77]

The attached draft Bill does not include statutory language specifically addressing this complex set of issues. However, it is believed that the following principles should be the base for their ultimate resolution.

First, no injured worker with an existing benefit or claim will be forced to transfer to the new system. Each such injured worker will be allowed to elect either (a) to continue to be dealt with under the existing Act, or (b) to have his situation appraised under the new Act. This choice will not have to be made at once but will remain available for the duration of existing claims. Those workers electing to remain under the old Act would not be eligible to have their pensions indexed for inflation.

Second, those workers who were injured previously but who elect to transfer to the new Act will have their benefits recalculated on the basis of actual wage loss. Only such recalculated benefits will be eligible for annual adjustment to future inflation. The injured worker's actual wage loss will be compensated in the same way as if the injury were suffered and compensation awarded after the new Act came into effect, but the earnings ceiling applied to these prior injuries will be set at the historical level of approxiamtely 125% of the average industrial wage.

Third, no existing Workers' Compensation pensioner transferring to the new scheme will receive a lump-sum award. Only actual wage loss will be compensated.

Fourth, dependent survivors receiving benefits under the existing Act will not be allowed to transfer to the jurisdiction of the new Act, due to the substantial differences in overall approach. They will however, be granted an annual adjustment to the existing Act's flat benefits on a basis consistent with the adjustments being made by Regulation for claims filed under the new Act.

Fifth, the new appeals system will handle claims which predate it only in respect of decisions which must be made about benefits extended to claimants under the new Act.

Assuming the adoption of these five principles, it is expected that workers who are experiencing a significant wage loss will elect to come under the umbrella of the new Act at such time as their wage loss exceeds their existing pension benefit.

On the other hand, disabled workers who have returned to work and are now suffering no actual wage loss would not be expected to move to the new Act, since they would be eligible for neither a lump-sum payment nor a wage-loss pension. It is anticipated that they will remain under the umbrella of th existing Act, even though the annual adjustment of benefits under the new Act will not apply to them. Receiving a lifetime, non-taxable

pension in spite of having suffered no wage loss may be considered the equivalent, in their case, of the lump-sum payment accorded by the proposed legislation. Therefore, they will neither be disentitled by the new Act, nor benefit from it.

The existing appeal system will not be abolished immediately, but it will be phased out over the coming years as its caseload declines. The reality is that if the new appeal system were to be assigned responsibility for appeals involving matters already decided on old claims, it would be deluged.

**ILLUSTRATION:**

A worker with a disability now rated at 20% of his pre-accident earnings of $15,000 was able to return to work at his old job with no actual wage loss, but under the current Act was awarded a lifetime pension of $187.50 a month. This worker does not choose to transfer to the new Act, since to do so would end his pension. He therefore stays on pension under the existing Act, although this pension will not receive future adjustment, either annually under the new Act or, sporadically, as under the existing Act.

Another worker is rated as 50% disabled. He had pre-accident earnings of $25,000 and now earns half that amount. With a dependent spouse and two dependent children, his current monthly award is $578, and he receives no supplement. This worker would not likely transfer to the new system right away, because under it he would be eligible for a monthly award of only $499 (based on the difference between his pre-accident net earnings and current net earnings). However, in the not too distant future this worker would elect to transfer. His monthly benefit under the old Act would stay at $578, while his potential monthly benefit under the new system would be adjusted annually to inflation.*

A third worker is totally disabled, with a dependent wife and two dependent children. His current monthly award is $938, but his actual income loss is $965. This worker may also be expected to transfer to the new system to take advantage of the protection against future inflation.

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* For purposes of calculating wage loss a worker's pre-accident net earnings and current net earnings will be based upon gross earnings adjusted in time with the ceiling, i.e., with average industrial wages in the province.

Finally, some reference should be made to the cost of allowing workers who are now receiving workers' compensation benefits to transfer to the new scheme outlined in this paper.

The reports of both the Staff Actuary and the Wyatt Company refer to such costs. These estimates are based on the assumptions embodied in the five points noted above, and are outlined in greater detail in the Staff Actuary's report.

The estimates themselves are summarized in Table 2, showing the cost to the Fund of future benefits to existing pensioners, whether or not they choose to come under the jurisdiction of a new Act. These figures indicate that $259 million can be saved by allowing workers the option of transferring to the new scheme. This amount represents the difference between the cost of continuing to pay benefits for existing pensioners under the current system (assuming that periodic inflation adjustments will continue to be made) and the cost of accommodating such workers while allowing them the option of transferring to the new scheme (i.e., $3.79 billion versus $3.53 billion).

It is anticipated that these savings will be used to meet unanticipated contingencies arising from the new program, to alleviate hardship in special cases, and to defray any additional administrative or transitional costs incurred.

A final observation: while it is believed that the five principles set out above should govern the treatment of prior claims, the specifics have not been developed to the same degree as the twenty-one proposals of the new Act (although the assumptions in the attached actuarial reports have been based on these five principles). Comments and suggestions for further consideration are therefore invited.

Table 2

COST ESTIMATES OF SCHEDULE 1 EXISTING CLAIMS

($ Million)

| | CURRENT ACT | | NEW ACT | Net Saving of Cost of NEW ACT Provisions |
|---|---|---|---|---|
| | Assuming no Allowance For Future Benefit/ Ceiling Increases | Assuming Allowance For Future Benefit/Ceiling Increases; Ceiling of $21,200 as of Jan. 1, 1981 | | |
| | (1) | (2) | (3) | (4) |
| (A) Temporary | $387 | $529 | $595 | $66 |
| (B) Permanent | 1,243 | 2,593 | 2,268 | -325 |
| (C) Survivor | 228 | 441 | 441 | 0 |
| (D) Medical Aid | 227 | 227 | 227 | 0 |
| | $2,085 | $3,790 | $3,531 | $259 |

Appendix I: Revised Draft Bill to amend the Workers' Compensation Act*

*The Revised Draft Bill appended to this second edition of the White Paper on the Workers' Compensation Act reflects changes made in the proposed legislation between 1981 (when it was drafted) and June 1983. This Revised Draft Bill was originally circulated to members of the Legislature's Standing Committee on Resources Development in September, 1982 by the Honourable R. H. Ramsay, the Minister of Labour.

BILL 1982

An Act to Revise

The Workmen's Compensation Act

HER MAJESTY, by and with the consent and advice of the Legislative Assembly of the Province of Ontario, enacts as follows:

DIVISION I - GENERAL

1.-(1) In this Act,

(a) "average earnings" means the average earnings of a worker determined by the Board pursuant to Section 20;

(b) "average industrial wage" means the average industrial wage in Ontario as determined annually by the Corporate Board;

(c) "benefits" includes any compensation, medical aid, rehabilitation or any payment made to or on behalf of a worker, spouse, children or dependants under this Act;

(d) "Board" means the Workers' Compensation Board;

(e) "cohabit" means to live together in conjugal relationship whether within or outside marriage;

(f) "compensation fund" means the fund established by this Act for the payment of benefits under Schedule 1, the costs and expenses of the administration of this Act, and such other costs and expenses as are directed by this Act to be paid out of the compensation fund;

(g) "construction" includes reconstruction, repair alteration and demolition;

(h) "dependants" means such of the members of the family of a worker as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the injury would have been so dependent;

(i) "earnings" means the aggregate of gross earnings of a worker from employment with the employer for whom the worker worked at the time of the injury and includes production bonuses, tips, gratuities, and allowances for room and board;

(j) "employer" includes every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry and includes,

(i) the Crown in right of Ontario and any permanent board or commission appointed by the Crown in right of Ontario; and

(ii) a Trustee, receiver, liquidator, executor or administrator who carries on an industry; and

(iii) a person who authorizes or permits a learner to be in or about an industry for the purpose mentioned in clause m;

(k) "independent operator" means a person who carries on an industry included in Schedule I and who does not employ any workers for that purpose;

(l) "industrial disease" means a disease mentioned in Schedule III, and includes,

(i) a disease resulting from exposure to a substance relating to a particular process, trade or occupation in an industry;

(ii) a disease peculiar to or characteristic of a particular industrial process, trade or occupation; or

(iii) a medical condition that in the opinion of the Board requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition is a precursor to an industrial disease;

(m) "industry" includes an establishment, undertaking, trade, business or service;

(n) "injury" includes personal injury including impairment, disablement, disfigurement, or death, arising out of and in the course of employment, and includes,

(i) the result of a wilful and intentional act, not being the act of the worker;

(ii) the result of a chance event occasioned by a physical or natural cause;

(iii) the result of an industrial disease;

(o) "invalid" means physically or mentally incapable of earning;

(p) "learner" means a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry within the scope of Part 1 for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment;

(q) "manufacturing" includes making, preparing, altering, repairing, ornamenting, printing, finishing, packing, packaging, inspecting, testing or assembling and includes adapting for use or sale any article, commodity or raw material;

(r) "medical aid" means medical, surgical, optometrical and dental aid, the aid of drugless practitioners under the The Drugless Practitioners Act, the aid of chiropodists under The Chiropody Act, hospital and skilled nursing services, such artificial members and such appliances or apparatus as may be necessary as a result of the injury and the replacement or repair thereof when deemed necessary by the Board;

(s) "member of the family" means a spouse, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister, and includes a person who stood in loco parentis to the worker or to whom the worker stood in loco parentis, whether related to him by consanguinity or not so related;

(t) "member of a municipal volunteer fire brigade" means a person whose membership has been approved either by the fire department of a corporation or its chief, or by a commission or board mentioned in subsection 2 or a duly authorized official thereof;

(u) "outworker" means a person to whom articles or materials intended for sale are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted in his own home or on other premises not under the control or management of the person who gave out the articles or materials;

(v) "permanent impairment" means any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved;

(w) "regulations" means the regulations made under this Act;

(x) "spouse" means either of a man or woman who are cohabiting and,

(i) are married to each other; or

(ii) have cohabited immediately preceding the death of the worker,

(A) for a period of not less than five years; or

(B) for a period of one year where there is a child born of whom they are the natural parents.

(y) "superannuation fund" means the Workers' Compensation Board Superannuation Fund;

(z) "worker" includes a person who has entered into or is employed under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes,

(i) a learner;

(ii) a member of a municipal volunteer fire brigade or a municipal volunteer ambulance brigade;

(iii) an auxiliary member of a police force;

(iv) a person deemed to be a worker of an employer by a direction or order of the Board;

(v) a person summoned to assist in controlling or extinguishing a fire by an authority empowered to do so;

(vi) a person who assists in any search and rescue operation at the request of and under the direction of a member of the Ontario Provincial Police Force;

but does not include an outworker, an executive officer of a corporation, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's industry;

(2) For the purpose of this Act, an authority who summons a person to assist in controlling or extinguishing a fire as mentioned in clause 1(z)(v), shall be deemed the employer of such person, and the Crown in right of Ontario shall be deemed the employer of a person who assists in any search and rescue operation as mentioned in clause 1(z)(vi), and the earnings of such person shall be the earnings in his regular employment calculated in accordance with section 20, or if such person has no earnings, his earnings shall be fixed by the Board.

(3) The exercise and performance of the powers and duties of,

(a) a municipal corporation;

(b) a public utilities commission or any other commission or any board having the management and conduct of any work or service owned by or operated for a municipal corporation except a hospital board;

(c) a public library board;

(d) the board of trustees of a police village; and

(e) a school board,

shall for the purposes of Part I be deemed the industry of the corporation, commission, board, board of trustees or school board.

(4) For the purposes of this Act, a municipal corporation, or board mentioned in subsection 3 shall be deemed to be the employer of a member of a municipal volunteer fire brigade, a municipal volunteer ambulance brigade or auxiliary member of a police force and such employment shall be deemed to be included in the exercise and performance of the powers and duties of the corporation, commission or board and it shall yearly, on or before such date as the Board may direct or at such other times as the Board may direct, notify the Board, specifying the number of volunteers engaged selecting the amount of coverage for such volunteers, which in no case shall be less than a rate which will provide the minimum amount of compensation under section 19(1)(a) or more than the maximum rate of annual earnings established by section 18.

(5) For the purposes of this Act and subject to subsection 2, the Crown in right of Ontario or a municipal corporation, commission or board mentioned in subsection 3 may report to the Board a person or persons as workers other than elected municipal officials specifying the number of persons so engaged and may select the amount of coverage for such persons which in no case shall be less than a rate which will provide the minimum amount of compensation under section 19(1)(a) or more than the maximum amount of annual earnings established by section 18 and the Board may deem such person or persons to be workers with earnings at the amount specified.

2.-(1) For the purposes of this Act and subject to subsection 2 a municipal corporation, commission or board mentioned in section 1(3) may report an elected municipal official or officials, provided he or they consent, and may select the amount of coverage for such persons which in no case shall be less than a rate which will provide the minimum amount of compensation under section 19(1)(a) or more than the maximum rate of annual earnings established by section 18 and the Board may deem such person or persons to be workers with earnings at the amount specified.

(2) No person deemed a worker under subsection 1 shall be entitled to more compensation than the maximum provided by sections 17 and 18.

3.-(1) On application to the Board an employer, an independent operator, a person the Board deems to be an employer, or notwithstanding the provisions of section 1(1)(z), an executive officer of a corporation may elect to be deemed a worker for the purposes of the Act, provided that,

(a) he is carried on the payroll of the business at his actual earnings for the year, or files with the Board a statement of his estimated earnings for the year which is acceptable to the Board, and

(b) he consents to the application.

(2) A person shall not be deemed under subsection 1 to be a worker unless the rate of his estimated or actual earnings yields the minimum amount of compensation provided by section 19(1)(a).

(3) No person deemed a worker under subsection 1 shall be entitled to more compensation than the maximum provided by sections 17 and 18.

4. Where the services of a worker are temporarily lent or hired to another person by the person with whom the worker has entered into a contract of service, the latter is deemed to continue to be the employer of the worker while he is working for the other person.

5. A reference in this Act to Schedule 1, 2 or 3 is a reference to Schedule 1, 2 or 3, as the case may be, in the regulations.

## PART I

## DIVISION II

## ENTITLEMENT TO BENEFITS

6.-(1) Where in any employment to which this Part applies, a worker suffers an injury and such injury arises out of and in the course of employment the worker and his dependants are entitled to benefits in the manner and to the extent provided in this Act.

(2) Where a worker is entitled to compensation for loss of earnings because of an injury, the employer shall pay to or on behalf of the worker the wages and benefits that the worker would have earned for the day or shift on which the injury occurred as though the injury had not occurred.

(3) Where the injury occasions loss of earnings subsequent to the day or shift on which the injury occurred, compensation for such loss of earnings shall be due and payable from the day or shift immediately following or the commencement of the loss of earnings whichever is the later.

(4) Where a worker is unable to work because of damage to an artificial member or an apparatus paid for under Section 34(2)(a), the worker is entitled to compensation for loss of earnings as though the inability to work had been caused by an injury.

(5) Where the injury arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment and, where the injury occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

(6) Where an injury is attributable solely to the serious and wilful misconduct of the worker, no benefits are payable unless the injury results in death or serious disability.

(7) In determining any claim for benefits under this Act the decision shall be made in accordance with the merits and justice of the case and where there is doubt on an issue and the disputed possibilities are evenly balanced, the issue shall be resolved in accordance with that possibility which is favourable to the worker.

7.-(1) Employers in the industries for the time being included in Schedule 1 are liable to contribute to the compensation fund as hereinafter provided, and are not liable individually to pay benefits.

(2) Employers in the industries for the time being included in Schedule 2 are liable individually to pay for the benefits as provided under this Act.

8.-(1) Where,

(a) a worker suffers an injury that is the result of an industrial disease, and

(b) the industrial disease is due to the nature of any employment in which the worker was engaged, whether with one or more employers,

the worker, spouse, children or his dependants are entitled to benefits subject to the modifications hereinafter mentioned or contained in the regulations, unless at the time of entering into the employment, the worker has wilfully or falsely represented himself in writing as not having previously suffered from the industrial disease.

(2) Where the benefits are payable by an employer individually, they are payable by the employer who last employed the worker in the employment to the nature of which the disease was due.

(3) The worker or his dependants, if so required, shall furnish the employer mentioned in subsection 2 with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due as such worker or his dependants may possess, and, if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4, that employer upon proving that the disease was not contracted while the worker was in his employment is not liable to pay benefits.

(4) If the employer mentioned in subsection 2 alleges that the disease was in fact contracted while the worker was in the employment of some other employer, he may bring such employer before the Board and, if the allegation is proved, that other employer is the employer by whom the benefits shall be paid.

(5) If the disease is of such a nature as to the contracted by a gradual process, any other employers who employed the worker in the employment to the nature of which the disease was due are liable to make to the employer by whom the benefits are payable such contributions as the Board may determine to be just.

(6) The amount of the compensation shall be fixed with reference to the average earnings of the worker as calculated under the provisions of section 20, but for the purposes of this section, where a worker is no longer engaged in the trade, occupation, profession or calling to which the disease is due, the Board may determine his average earnings at an amount that it considers fair and equitable having regard to the average earnings of a fully qualified person engaged in the same trade, occupation, profession or calling to which the disease is due during the twelve months prior to the commencement of disability, but not in any case exceeding the rate provided by section 18.

(7) Subsections 1 and 6 do not apply to a worker who has been awarded compensation for an industrial disease under the then section 42 prior to the 1st day of January, 1974, or entitle any worker to claim additional compensation for any period prior to that date, and shall apply only to compensation payable to a worker on and after that date.

(8) The notice provided for by section 62(1) shall be given to the employer who last employed the worker, in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the worker has voluntarily left the employment.

(9) Where benefits for an industrial disease are payable out of the compensation fund, the Board shall make such investigation as it considers necessary to ascertain the class or group against which the benefits should be charged and shall charge or apportion the benefits accordingly.

(10) If the worker at or before the date of the disablement was employed in any process mentioned in the second column of Schedule III and the disease contracted is the disease in the first column of the Schedule set opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved and the Board is satisfied that the disease is not due to any other cause than employment in Ontario.

(11) The Board may pay the remuneration and expenses of such persons as may be required to carry out the provisions of The Occupational Health and Safety Act, 1978, or the regulations thereunder for the examination of workers or applicants for employment out of the rates imposed under this Act for payment of silicosis claims.

(12) Except where the Board is satisfied that the disease is not due to any other cause than his employment in Ontario, nothing in this Act entitles a worker or his dependants to benefits for disability or death from silicosis unless the worker has been actually exposed to silica dust in his employment in Ontario for periods amounting in all to at least two years preceding his disablement.

(13) Notwithstanding any other provision in this Act, the Board may enter into an agreement with the appropriate authority in any other province or territory of Canada to provide for the sharing of costs of silicosis claims in proportion to exposure or estimated exposure to silica dust for workers who have had exposure employment in Ontario and who may not qualify for benefits in any one province or territory of Canada because of residence or exposure requirements.

(14) Notwithstanding any other provision in this Act, the Board may enter into an agreement with the appropriate authority in any other province or territory of Canada to provide for the sharing of costs of industrial noise induced hearing loss claims in proportion to the actual or estimated amount of exposure in Ontario to industrial noise which contributed to the hearing loss.

(15) Nothing in this section affects the right of a worker to benefits in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to benefits under this Part.

(16) The provisions of this section relating to silicosis apply with all necessary modifications to pneumoconiosis and stone worker's or grinder's phthisis.

(17) The Board, subject to the approval of the Lieutenant Governor in Council, may declare any disease to be a scheduled industrial disease and may amend Schedule 3 accordingly.

9.-(1) Where a worker suffers injury out of Ontario, and

(a) the place of business or the chief place of business of the employer is in Ontario,

(b) the residence and usual place of employment of the worker is in Ontario, and

(c) the employment of the worker out of Ontario lasted less than six months,

the worker, spouse, children or his dependants are entitled to benefits under this Part as if the injury was suffered in Ontario.

(2) Where a worker suffers injury out of Ontario, and

(a) the place of business or the chief place of business of the employer is in Ontario;

(b) the residence and usual place of employment of the worker is in Ontario; and

(c) the employment of the worker out of Ontario lasts or is likely to last six months or more;

the employer may apply to the Board to be assessed and make contribution to the compensation fund on the earnings of the worker and where the employer has applied and the Board has accepted the application, the worker, spouse, children or his dependants are entitled to benefits under this Part as if the injury was suffered in Ontario.

(3) Where a worker suffers injury out of Ontario, and

(a) the place of business or chief place of business of the employer is in Ontario;

(b) the residence of the worker is out of Ontario and his usual place of employment is in Ontario; and

(c) the employment of the worker out of Ontario was temporary and connected with the employment;

the worker, spouse, children or his dependants are entitled to benefits under this Part as if the injury was suffered in Ontario.

(4) Where a worker suffers injury out of Ontario, and

(a) the place of business or chief place of business of the employer is out of Ontario;

(b) the residence of the worker is in or out of Ontario, and his place of employment is in Ontario;

(c) the employment of the worker out of Ontario was for some casual or incidental purpose connected with the employment;

the worker, spouse, children or his dependants are entitled to benefits under this Part as if the injury was suffered in Ontario.

(5) Where a worker suffers injury out of Ontario, and

(a) the worker or his dependants are entitled to compensation under the law of the place where the injury was suffered;

(b) the place of business or chief place of business of the employer is out of Ontario; and

(c) the residence of the worker is in or out of Ontario and his usual place of employment is out of Ontario,

the worker, spouse, children or his dependants are not entitled to benefits under this Part.

(6) Where a worker suffers injury out of Ontario, and

(a) the injury was suffered on a steamboat, ship or vessel, a railway or aircraft or a truck, bus or other vehicle used in transporting passengers, goods or things,

(b) the residence of the worker is in Ontario, and

(c) the work or service of the worker is performed in and out of Ontario,

the worker, spouse, children or his dependants are entitled to benefits under this Part as if the injury was suffered in Ontario.

(7) Where a worker suffers injury out of Ontario, and

(a) the injury was suffered on a steamboat, ship or vessel,

(b) the residence of the worker is in Ontario,

(c) the worker has or has not been previously employed in Ontario,

(d) the employment out of Ontario, if any, has continued for any period of time, and

(e) the steamboat, ship or vessel is registered in Canada or the chief place of business of the owner or charterer of the steamboat, ship or vessel is in Ontario,

the worker, spouse, children or his dependants are entitled to benefits under this Part as if the injury was suffered in Ontario.

(8) Except as provided in this section, no benefits are payable under this Part where injury to the worker happens while he is employed elsewhere than in Ontario.

(9) If a worker receiving a periodical payment ceases to reside in Ontario, he is not thereafter entitled to receive any such payment unless the Board is satisfied that the injury is likely to continue, and, if the Board so determines, the worker may continue to receive such periodical payments as are contemplated by Part 1.

(10) With a view to avoiding duplication of assessments to which an employer may be liable on the earnings of workers who are employed part of the time in Ontario and part of the time in another province or territory of Canada, the Board may make an agreement with the Workers' Compensation authority of that province or territory for such adjustment of assessments as is equitable and may reimburse such other authority for any payment of benefits made by it under such agreement, and may, in order to give effect to any such agreement, relieve any such employer from assessment or reduce the amount thereof.

10. A worker shall not agree with his employer to waive or forego any of the benefits which may be payable to the worker, spouse, children or dependants under this Part and every such agreement is void.

11. Where the benefits are payable by an employer individually, no agreement between a worker, spouse, child or dependants and the employer for fixing the amount of the benefits or by which the worker, spouse, child or dependant accepts or agrees to accept a stipulated sum in lieu or in satisfaction of benefits is binding on the worker or dependant unless it is approved by the Board.

12.-(1) No employer, either directly or indirectly, shall deduct from the wages of any of his workers any part of any sum that the employer is or may become liable to pay to the worker as benefits under this Part or to require or to permit any of his workers to contribute in any manner towards indemnifying the employer against any liability that he has incurred or may incur under this Part.

(2) Every employer is, in addition to any other penalty provided under this Act, also liable to repay to the worker any sum that has been so deducted from his wages or that he has been required or permitted to pay in contravention of subsection 1.

13. Except with the approval of the Board, no sum payable as compensation is capable of being assigned, charged or attached, nor does it pass by operation of law other than to a personal representative nor shall any claim be set off against it.

## DIVISION III

## RIGHT OF ACTION, ELECTION AND SUBROGATION

14.-(1) The provisions of this Part are in lieu of any right and rights of action, statutory or otherwise, to which a worker, spouse, child or the dependants of a worker is, are or may be entitled against,

(a) the employer of the worker;

(b) any employer in Schedule 1 or 2; or

(c) a worker of an employer in Schedule 1 or 2;

in respect of any injury and no action lies in respect thereof.

(2) Subsection 1 applies only where the injury is caused by the action or conduct of an employer, an agent of the employer or a worker where the conduct or action arose out of and in the course of carrying on the industry of the employer or out of and in the course of employment.

(3) Where injury is caused to a worker under such circumstances that a right of action lies, the worker, spouse, children or the dependants of the worker, if entitled to benefits under this Part, may claim such benefits or may bring such action.

(4) If less is recovered and collected by a judgment in the action or by settlement than the amount of benefits to which the worker, spouse, child or the dependants of the worker are entitled under this Part, the difference between the amount recovered and collected and the amount of such benefits are payable to the worker, spouse, children or dependants of the worker.

(5) Subsection 4 applies to a settlement only if the approval of the Board has been given before the settlement is made.

(6) If the worker, spouse, child or his dependants elect to claim benefits under this Act, the employer, if he is individually liable to pay benefits, and the Board, if the benefits are payable out of the compensation fund, is subrogated to all rights of the worker, spouse, child or his dependants in respect of the injury to the worker and may maintain an action in the name of the worker or of the spouse, children or dependants or of the Board if the employer is an employer in Schedule 1, or of the employer if he is an employer in Schedule 2, against the person against whom the action lies and any amount recovered over and above all amounts expended or likely to be expended by the Board or the employer in respect of such claim and action shall be paid to the worker, spouse, child or his dependants and any such surplus paid to the worker, spouse, child or his dependants shall be deducted from the amount of any future benefits to which he or they may become entitled in respect of the accident that gave rise to the injury.

(7) The employer in Schedule 2 or the Board may, in the action under subsection 6 also recover any amounts expended on behalf of the worker, spouse, child or his dependants by way of benefits and has the exclusive right to determine whether such action shall be maintained, abandoned or compromised.

(8) The election shall be made and notice of it shall be given within the time and in the manner provided by Section 15.

(9) If a worker, spouse, child or a dependant is under the age of majority, the election under subsection 3 may be made on his behalf by a parent or guardian or by the Offical Guardian.

(10) If a worker is mentally incapable of making the election under subsection 3 or is unconscious as a result of his injury and no committee has been appointed, his spouse may make such election, but if no election is made within sixty days after the date of the injury, the Public Trustee shall elect on behalf of the injured worker.

(11) In any action brought by a worker of an employer in Schedule 1 or spouse, child or dependant of such worker in any case within subsection 3 or maintained by the Board under subsection 6 and one or more of the persons found to be at fault or negligent is the employer of the worker in Schedule 1, or any other employer in Schedule 1 or 2, or any worker of any employer in Schedule 1 or 2, no damages, contribution or indemnity are recoverable for the portion of the loss or damage caused by the fault or negligence of such employer of the worker in Schedule 1, or of any other employer in Schedule 1 or 2, or of any worker of any employer in Schedule 1 or 2, and the portion of the loss or damage so caused by the fault or negligence of such employer of the worker in Schedule 1, or of any other employer in Schedule 1 or 2, or of the worker or any employer in Schedule 1 or 2, shall be determined although such employer or worker is not a party to the action.

(12) In any action brought by a worker of an employer in Schedule 2 or spouse, child or dependant of such worker in any case within subsection 3 or maintained by the employer of the worker under subsection 6 and one or more of the persons found to be at fault or negligent is the employer of the worker in Schedule 2, or any other employer in Schedule 1 or 2 or any worker of any employer in Schedule 1 or 2, no damages, contribution or indemnity are recoverable for the portion of the loss or damage caused by the fault or negligence of such employer or any other employer in Schedule 1 or 2, and the portion of the loss or damage so caused by the fault or negligence of such employer or any other employer in Schedule 1 or 2 or any worker of any employer in Schedule 1 or 2, shall be determined although such employer or worker is not a party to the action.

15.-(1) Where by the law of the country or place in which the injury happens the worker or dependants of the worker are entitled to compensation in respect thereof, he or they shall be bound to elect whether to claim compensation under the law of such country or place, or under this Part, and to give notice of such election and if such election is not made, it shall be presumed that he or they have elected not to claim benefits under this Part.

(2) Notice of election, where the benefits under this Part are payable by the employer individually shall be given to the employer, and, where the benefits are payable out of the compensation fund, to the Board, and shall be given in either case within three months after the happening of the injury or, in case it results in death, within three months after the death or within such longer period as the Board may allow either before or after the expiration of such three months.

16.-(1) No action lies for the recovery of benefits whether they are payable by the employer individually or out of the compensation fund, but all claims for benefits shall be determined by the Board.

(2) Any party to an action may apply to the Appeals Tribunal for adjudication and determination of the question of the plaintiff's right to benefits under this Part, or as to whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination is final and conclusive.

## DIVISION IV

## SCALE OF COMPENSATION

17.-(1) Where injury to a worker results in loss of earnings beyond the day of the injury, the worker is entitled to compensation under this Act in an amount equal to ninety percent of the difference between his net average earnings before the injury and his net average earnings after the injury so long as the injury and loss of earnings due to the injury continues and until the worker reaches the age of sixty-five years or dies whichever first occurs.

(2) Notwithstanding subsection 1 where a worker is sixty-three years of age or more at the time of injury, the Board may provide compensation for a loss of earnings due to the injury for a period of not more than two years following the date of injury.

18. The maximum amount of average earnings upon which the loss of earnings is to be calculated shall be 250% of the average industrial wage in Ontario as determined annually by the Corporate Board.

19.-(1) Minimum compensation for loss of earnings;

(a) where net average earnings exceed 50 percent of the average industrial wage in Ontario and 90 percent of net average earnings are less than 50 percent of the average industrial wage, the worker is entitled to the difference between 50 percent of the average industrial wage and net average earnings after the injury;

(b) where net average earnings are less than 50 percent of the average industrial wage in Ontario, the worker is entitled to the difference between net average earnings before the injury and net average earnings after the injury.

(2) Notwithstanding subsection 1, the minimum amount of compensation payable to a worker for total loss of earnings who is entitled to a lump sum payment for 100 percent permanent impairment in one claim under section 22 shall be 50 percent of the average industrial wage in Ontario.

(3) The minimum amount of compensation to which a spouse, or spouse and child or children of a worker are entitled under subsection 26(2) or subsection 26(3)a is fifty percent of the average industrial wage in Ontario.

(4) The minimum amount of compensation to which a child or children of a worker are entitled under subsection 26(4) is fifty percent of the average industrial wage in Ontario multiplied by the percentage prescribed therein.

20.-(1) In determining the average earnings of a worker, the Board shall,

(a) compute the daily or hourly rate of the worker's earnings with the employer for whom the worker worked at the time of injury as is best calculated to give the rate per week at which the worker was remunerated at the time of injury;

(b) if the above does not fairly represent the average earnings of the worker, upon application, the Board shall determine the worker's average earnings with the employer for whom the worker worked at the time of injury during the twelve months or such lesser period when he was employed with the employer immediately preceding the injury.

(2) Where owing to the shortness of the time during which the worker was in the employment of his employer or the casual nature of his employment or where it is impractical to compute the average earnings at the time of the injury, regard may be had to the average earnings that during the twelve months prior to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, then by a person in the same grade employed in the same class of employment in the same locality.

(3) Where the worker has entered into concurrent contracts of service with two or more employers under which he worked at one time for one of them and at another time for another of them, his average earnings shall be computed on the basis of what he probably would have been earning if he had been employed full time in the employment of the employer for whom he was working at the time of injury, provided that his average earnings so computed shall not exceed the sum of his actual earnings under the concurrent contracts of service.

(4) Employment by the same employer means employment by the same employer in the grade in which the worker was employed at the time of the injury uninterrupted by absence from work due to illness or any other unavoidable cause.

(5) Where the employer was accustomed to pay the worker a sum to cover any special expenses entailed on him by the nature of his employment, that sum shall not be reckoned as part of his earnings.

(6) Where a worker is an apprentice or in the course of learning a trade, occupation, profession or calling and his remuneration is of a nominal nature, the Board may for the purposes of this Act determine his average earnings at the time of the injury at an amount it considers fair and equitable having regard to the average earnings of a fully qualified person engaged in the same trade, occupation, profession or calling, and the employer of the worker is liable to pay assessment to the Board on the earnings so determined.

(7) Where a worker was employed in a position which is included within an established job progression scheme or salary grid, at the time of injury, the Board may take this into account in determining the amount of the loss of earnings of the worker.

(8) Where the worker having become entitled to benefits under this Act because of injury, returns to employment and establishes a true working capacity, and becomes entitled to further benefits by reason of any matter attributable to that injury, the compensation payable shall be either the rate paid at the date of that injury and increased by subsequent legislation or 90 percent of the net average earnings at the time the worker becomes entitled to further compensation, whichever is the greater.

(9) For the purpose of subsection (8), the rate of compensation paid at the date of that injury may include any amount determined under subsection (7).

21.-(1) The net average earnings of a worker shall be determined by the Board by deducting from the earnings of a worker,

(a) the probable income tax payable by the worker on his earnings;

(b) the probable Canada Pension Plan premiums payable by the worker;

(c) the probable unemployment insurance premiums payable by the worker.

(2) The Board shall on the 1st day of January in each year establish a schedule setting forth a table of net average earnings based upon the provisions of section 21(1) and such schedule shall be deemed conclusive and final.

(3) In calculating the net loss of earnings as a result of an injury to which a worker is entitled to compensation under this Act, there shall be deducted from the earnings of the worker any disability payments the worker receives from the Canada Pension Plan.

(4) Where a worker is in receipt of compensation for loss of earnings because of an injury and the worker suffers another injury for which he would be entitled to receive compensation for further loss of earnings, the Board shall calculate the compensation payable to the worker for the further loss of earnings upon the average earnings of the worker at the time of the injury for which the worker was receiving compensation and the compensation shall not exceed 90 percent of such average earnings.

(5) Where it appears to the Board that a worker receiving compensation has refused to accept suitable available employment notwithstanding the injury, the Board shall deem the worker to have earned the average earnings payable from such employment in calculating the loss of earnings.

(6) Where a worker is entitled to compensation under this Act, regard shall be had to any payment, allowance, advance or benefit paid to the injured worker by the employer in respect of the worker's injury, including any gratuity or other allowance provided wholly at the expense of the employer.

(7) Where the provisions of subsection (6) apply and compensation is payable out of the compensation fund, any sum deducted from the compensation under subsection (6) may be paid to the employer out of the compensation fund.

22.-(1) Where the injury to a worker causes a permanent impairment the worker is entitled, in addition to any compensation otherwise provided by this Act, to a lump sum payment determined in accordance with this section.

(2) In administering this section, the Board shall compile and establish from time to time a rating schedule, which may be used as a guide in determining percentages of permanent impairment.

(3) Where the permanent impairment is not included in a rating schedule established under subsection 2, the Board shall determine the percentage of permanent impairment.

(4) No combination of permanent impairments in any one claim shall result in a percentage of permanent impairment greater than 100%.

(5) The lump sum payment shall be determined as follows:

(a) the maximum amount of earnings as determined by the Board under section 18 in effect at the time of the injury shall be multiplied by the percentage of permanent impairment;

(b) the product obtained under clause a shall be multiplied by an age adjustment factor of 2 percent for each year of the age of the worker below or above forty years of age at the time of the injury but in no case shall the age adjustment factor exceed 50 percent;

(c) the product obtained under clause b shall be added in the case of age below forty years or subtracted in the case of age above forty years from the product obtained under clause a.

23.-(1) Where a worker is injured as a result of which the worker is entitled to compensation for total loss of earnings and the worker at the time of injury was entitled to or provided with employment benefits under a medical, dental, insurance or pension or similar benefit plan or arrangement to which the employer made contributions on behalf of the worker or a member of his family, the employer shall maintain such full benefits during the period the worker is entitled to compensation for loss of earnings for a period of up to twelve months immediately following the month in which the injury occurred.

(2) Where a worker is injured as a result of which the worker is entitled to compensation for loss of earnings for a period exceeding twelve months immediately following the month in which the injury occurred and the worker at the time of injury was entitled to or provided with employment benefits mentioned in subsection 1 to which the employer made contributions on behalf of the worker or a member of his family, the Board where the compensation is payable out of the compensation fund and the employer where the employer is liable individually to pay the compensation, shall take such steps or make such arrangements to maintain such full employment benefits so long as the compensation is payable or to compensate the worker therefor in money or in kind.

(3) Where an employer fails to comply with subsections 1 or 2, the Board may take such steps or make such arrangements to maintain such benefits and may assess the employer for the cost thereof.

24.-(1) Where a worker who has become entitled to a benefit under section 22 is also entitled to continuing compensation for loss of earnings or where injury to a worker causes death entitling a spouse to benefits therefor, the Board, where the benefits is payable out of the compensation fund, and the employer, where the employer is liable individually to pay the benefits shall set aside an amount that will in the Board's opinion be sufficient to compensate the worker or spouse as the case may be for the difference between the retirement income the worker or spouse will receive because of the injury and the retirement income the worker or spouse would likely have received had the injury not occurred.

(2) An employer who is individually liable to pay benefits shall pay to the Board the amount referred to in subsection 1.

(3) The Board shall invest the amounts set aside or received from an employer pursuant to subsections 1 and 2 by,

(a) retaining them in the Board's reserves;

(b) using them to purchase Canada Pension Plan credits, if possible;

(c) paying them into an established superannuation plan or a registered retirement savings plan covering the worker or the spouse.

(4) Upon reaching the age of sixty-five, the worker or the spouse shall be entitled to the benefits provided for by subsections 1 and 3.

(5) A spouse receiving compensation in the amount provided by subsection 26(3)(b) shall be paid an additional amount equal to the commuted value of the deceased worker's expected retirement income at age sixty-five multiplied by the fraction from Table B that is used to determine the amount of compensation to which the spouse is entitled under the said clause.

25.-(1) Where an injured worker of an employer who receives compensation for loss of earnings is in the opinion of the Board able to perform the essential functions of the employment being performed at the time of injury within a period of two years from the time of injury, and the worker has one year or more of service with the employer prior to the time of the injury the employer shall, subject to subsection 2, reinstate the worker in that employment.

(2) An employer is not required to reinstate a worker in accordance with subsection 1 where the employer no longer has workers engaged in performing employment of the same or similar nature to the employment in which the worker was engaged at the time of his injury, or where the employer has suspended or discontinued operations and not resumed them within the period of two years from the time of injury.

(3) Where an injured worker of an employer who receives compensation for loss of earnings is not able to perform the essential functions of the employment being performed at the time of injury but within a period of two years from the time of injury the employer has alternative work which the worker in the opinion of the Board is reasonably capable of performing, the employer, before employing anyone to perform such work shall offer the work to the injured worker on the same terms and conditions as the employer would have offered to the worker he otherwise would have employed.

(4) Where an employer has work that is being performed by a worker with less than one year's service with the employer and an injured worker of the employer who receives compensation for loss of earnings,

(a) has had ten years of service with the employer; and

(b) is reasonably capable of performing the essential functions of the work;

the employer shall offer the work to the injured worker upon the same or better terms and conditions that the worker performing the work has.

(5) This section prevails over any provisions that may be contained in a collective agreement or other arrangement the employer may have with workers.

(6) Where an employer contravenes this section, the Board shall assess the employer for any additional wage loss thereby payable out of the compensation fund.

26.-(1) Where an injury to a worker causes his death, the spouse of the deceased worker is entitled to,

(a) a lump sum payment equal to the maximum amount of average earnings under section 18 in effect at the worker's death adjusted by the addition of 2 percent for each year of age of the spouse under forty years or reduced by the subtraction of 2 percent for each year of age of the spouse over forty years provided that in no case shall the adjustment for age exceed 50 percent; and

(b) compensation by way of periodic payments in the manner and to the extent provided in this section; and

(c) the Board shall provide to a spouse entitled to compensation under section 26 the same counselling and vocational assistance as would be provided to a worker under the provisions of section 36 in order to enable the spouse to enter the labour force and become self- sufficient.

(2) Where a deceased worker is survived by a spouse and a child or children, compensation in an amount equal to ninety percent of the deceased worker's net average earnings at the time of injury shall be payable until the youngest child reaches the age of sixteen.

(3) Where the deceased worker is survived by,

(a) a spouse who at the time of the worker's death is fifty years of age or older, compensation in an amount equal to seventy-five percent of the deceased worker's net average bearnings shall be payable to the spouse until the day the spouse attains the age of sixty-five years or dies whichever first occurs;

(b) a spouse who at the time of the worker's death is forty years of age or older and less than fifty years of age, compensation in an amount as set out in Table A immediately following this section shall be payable to the spouse until the spouse attains the age of sixty-five years or dies whichever first occurs.

Table A

A monthly payment of 75 percent of the deceased worker's net average earnings at the time of injury multiplied by the fraction set opposite the age of the spouse at the time of the worker's death.

| Age of Spouse | Fraction |
|---|---|
| 40 | 1/11 |
| 41 | 2/11 |
| 42 | 3/11 |
| 43 | 4/11 |
| 44 | 5/11 |
| 45 | 6/11 |
| 46 | 7/11 |
| 47 | 8/11 |
| 48 | 9/11 |
| 49 | 10/11 |

(c) a spouse who at the time of the worker's death is less than forty years of age, no compensation other than the payments provided in clause a of subsection 1 and subsection 7 of this section, shall be payable.

(d) notwithstanding the provisions of clauses (b) and (c) of subsection (3), the Board may order payment of compensation in such amounts and for such period or periods as it deems appropriate if the Board finds that undue hardship exists because of the spouse's illness, inability to find employment despite reasonable attempts made in good faith to do so or for other reasonable cause.

(4) Where there is no spouse entitled to compensation and the deceased worker is survived by,

(a) a dependant child, the dependant child is entitled to compensation equal to thirty percent of the net average earnings of the deceased worker at the time of injury;

(b) two dependant children, they are entitled to compensation equal to forty percent of the net average earnings of the deceased worker at the time of injury;

(c) more than two dependant children, they are entitled to compensation equal to forty percent of the net average earnings of the deceased worker at the time of injury plus an additional ten percent of the net average earnings come of the deceased worker at the time of injury for each additional dependant child over two to a maximum of ninety percent.

(5) In addition to the compensation payable under subsection 4, a dependant child or children shall be entitled to receive payment of a lump sum not exceeding in total an amount equal to the maximum rate of earnings under section 18 in effect at the date of the worker's death.

(6) Where a deceased worker is not survived by a spouse or child or children and there are dependants, the dependants are entitled to reasonable compensation proportionate to the loss occasioned to the dependants by the death to be determined by the Board, but in no case shall the total compensation exceed fifty percent of the net average earnings of the deceased worker at the time of injury, and the compensation shall be payable only for so long as the worker could have been reasonably expected to continue to support the dependant or dependants if the deceased worker had not suffered injury.

(7) Payment shall be made for,

(a) the necessary expenses of burial or cremation of a deceased worker, in an amount as periodically fixed by the Corporate Board; and

(b) where owing to the circumstances of the case the body of a worker is transported for a considerable distance for burial or cremation, a further sum for the necessary extra expenses so incurred.

(8) Subject to subsection 9, where compensation has been paid in accordance with the provisions of subsection 2, and no child is under the age of sixteen years, the spouse shall be entitled to payment of compensation in accordance with subsection 3, as if the worker had died on the day after the day the youngest child then living reached the age of sixteen years.

(9) Where subsection 8 applies and the Board is satisfied that it is advisable for a child or children over the age of sixteen to continue education, the Board shall pay in respect of each such child 10 percent of the net average earnings of the worker at the time of the injury but the total benefit in respect of the spouse and such children shall not exceed 90 percent of the net average earnings of the worker at the time of the injury.

(10) Where a deceased worker is survived by a spouse and a child or children, and the spouse subsequently dies or marries, the amount of compensation payable to the child or children shall be calculated and paid in the same manner as if the worker had died, at the time of death or marriage of the spouse leaving no spouse.

(11) Where a child is entitled to compensation under this section and is being maintained by a suitable person who is acting in loco parentis in a manner the Board considers satisfactory, such person while so doing is entitled to receive the same monthly payments of compensation for himself or herself and the child as if he or she were a spouse of the deceased and in such case the child's part of such payments shall be in lieu of the monthly payments that he would otherwise be entitled to receive.

(12) Compensation is payable to an invalid child without regard to the age of the child and shall continue until the child ceases to be an invalid or dies.

27. In calculating the net average earnings of a deceased worker for the purposes of paying compensation by way of periodic payments to a spouse, children or dependants of a deceased worker, there shall be deducted from such earnings any payments the spouse, children or dependants receive by way of any survivor's benefit under the Canada Pension Plan.

28. A spouse living separate and apart from the deceased worker at the time the worker dies is not entitled to compensation under section 26 unless the worker was or would have been required to make support, maintenance or alimony payments to the spouse under a separation agreement or judicial order.

29.-(1) Where a spouse receiving monthly compensation pursuant to section 26 remarries or cohabits for more than one year, the spouse is no longer entitled to such compensation.

(2) Notwithstanding the provisions of Section 29(1), a spouse shall be entitled to payment with respect to a child of the deceased worker under Section 26(4).

30.-(1) Subject to subsection (2), where an injured worker dies and has received or but for his or her death would have received a lump sum payment for 100 percent permanent impairment under Section 22, the spouse, dependant child or children of the worker, or his or her other dependants are entitled to benefits as if the worker had died as a result of the injury.

(2)Where an injured worker has received payment of compensation by way of the lump sum payment prescribed by subsection 22(1), the amount of compensation by way of a lump sum payable to a spouse under clause 26(1)(a) or to a child or children under clause 26(5) shall be decreased by the amount paid to the injured worker for the same injury.

31. Where a worker is receiving compensation and it appears to the Board,

(a) that the worker is no longer residing in Ontario, but that the spouse or child or children under sixteen years of age are still residing in Ontario without adequate means of support or

(b) that the worker, although still residing in Ontario is not supporting the spouse, or child or children and an order has been made against the worker by a court of competent jurisdiction for the support or maintenance of the spouse or child or children

the Board may divert such compensation in whole or in part from the worker for the benefit of the spouse or child or children.

32. If a worker or a dependant is under the age of eighteen years or is of unsound mind or in the opinion of the Board is incapable of managing his own affairs, any benefits to which he is entitled may be paid on his behalf to his parent, spouse or committee or to the Public Trustee or may be paid to such other person or applied in such manner as the Board considers in the best interest of such worker or dependant, and when paid to the Public Trustee, it is the duty of the Public Trustee to receive and administer any such money for the benefit of the worker or dependant.

33.-(1) The Board shall, by the 1st of November each year make a public report to the Lieutenant Governor in Council with its recommendation for the appropriate adjustment for inflation in calculating compensation under this Act.

(2) The Lieutenant Governor in Council may by order-in-council adopt or modify the recommendation made by the Board, and such decision shall be effective for the next ensuing year.

## DIVISION V(a)

## MEDICAL AID AND MEDICAL REHABILITATION

34.-(1) Every worker who becomes entitled to benefits under Section 6(1) shall,

(a) receive such medical aid as may be necessary as a result of the injury;

(b) make the initial choice of doctor or other qualified practitioner for the purposes of this section; and

(c) where, in the opinion of the Board, the worker is rendered helpless through permanent total impairment, receive such other treatment, services or attendance as may be necessary as a result of the injury.

(2) In exercising the functions required of it by subsection (1), and without limiting the generality of that subsection, the Board may

(a) organize and provide medical rehabilitation services;

(b) develop, support and promote the activities of professionals in the field of health establishments, and of any other organization dealing with medical rehabilitation, and co-operate with them;

(c) assess the services available for medical rehabilitation and their efficiency;

(d) cause research to be carried out on new medical rehabilitation methods;

(e) see to the effectiveness of the medical rehabilitation measures and bring about the appropriate corrections;

(f) distribute information on medical rehabilitation;

(g) facilitate the access of the worker to medical rehabilitation;

(h) aid in the adaptation of the injured worker's principal residence to allow the worker to return to the home environment in place of institutional care wherever this is possible relative to the medical well-being of the worker.

(3) The Board may pay and, where the employer is individually liable, may order the employer to pay,

(a) for the replacement or repair of an artificial member or an apparatus of a worker that is damaged as a result of an injury in employment; and

(b) an allowance not exceeding an amount fixed by regulation for the replacement or repair of clothing worn or damaged by the wearing of a lower or upper limb prosthesis, leg brace or back brace where the same has been supplied by the Board.

(4) Medical aid shall be furnished or arranged for by the Board or as it may direct or approve, and

(a) for employers in the industries included in Schedule 1, shall be paid out of the compensation fund; and

(b) for employers in the industries included in Schedule 2, shall be paid by the employer of the injured worker to the Board.

(5) Where the Board is of the opinion that it is in the interests of the injured worker and the compensation fund to provide a special surgical operation or special medical treatment for a worker, the expense of such operation or treatment may be paid out of the compensation fund or by the employer individually if so directed by the Board.

(6) All questions as to the necessity, character and sufficiency of any medical aid furnished or to be furnished and as to payment for medical aid shall be determined by the Board.

(7) The fees or charges for medical aid shall not be more than would be properly and reasonably charged to the worker if he was paying those fees or charges, and the amount thereof shall be determined by the Board.

(8) No action for any fees or charges for medical aid lies against the Board, an injured worker, the employer, or any other person.

(9) Where accounts for payment of medical aid are not received by the Board within such time as the Board may direct, the Board may impose a penalty by way of a percentage reduction in the amount of the account as it may direct.

(10) No employer, directly or indirectly, shall collect or receive or retain from any worker any contribution toward the cost or expense of medical aid.

(11) The Board may require employers or a class of employers to maintain such first-aid appliances and service as the Board may direct, and the Board may make such order respecting the expense thereof as may be considered just.

(12) Every employer shall at his own expense furnish to any worker injured in his employment who is in need of it immediate conveyance and transportation to a hospital or a physician located within the area or within a reasonable distance of the place of injury, or to the worker's home, and any employer who fails to do so is liable to pay for such conveyance and transportation as may be procured by the worker or by anyone for him, or as may be provided by the Board.

(13) Where, in conjunction with or apart from the medical aid to which a worker is entitled free of charge, further or other service or benefit is, or is proposed to be, given or arranged for, any question arising as to whether or to what extent any contribution from the worker is or would be prohibited by this Act shall be determined by the Board.

(14) In addition to any payments for compensation provided by this Part, the Board may furnish or provide an injured worker with an allowance for his subsistence and travelling when, under its direction, the worker is undergoing treatment or examination at a place other than the place where he resides.

35. Every physician, surgeon, hospital official or other person attending, consulted respecting, or having the care of, any worker shall furnish to the Board from time to time, without charge, such reports as may be required by the Board in respect of such worker.

## DIVISION V(b)

## VOCATIONAL REHABILITATION

36.-(1) The Board shall take such measures as it deems necessary and make such payments as it deems expedient to assist an injured worker,

(a) in returning to a normal work environment;

(b) in lessening or removing any vocational handicap resulting from the injury; and

(c) in achieving non-institutional accommodation and to facilitate the injured worker's participation in community activities by:

(i) appropriate modification to the injured worker's principal residence;

(ii) providing mobility through modification of the injured worker's vehicle;

(iii) supplying appropriate assistive devices, prosthetic appliance adaptations and attachments.

(2) In exercising the functions required of it by subsection (1), and without limiting the generality of that subsection, the Board may,

(a) organize and provide vocational rehabilitation services;

(b) develop, support and promote the activities of professionals in the field of health establishments, and of any other organization dealing with vocational rehabilitation, and co-operate with them;

(c) assess the services available for vocational rehabilitation and their efficiency;

(d) cause research to be carried out on new vocational rehabilitation methods;

(e) see to the effectiveness of the vocational rehabilitation measures and bring about the appropriate corrections;

(f) distribute information on vocational rehabilitation;

(g) facilitate the access of the worker to vocational rehabilitation;

(h) ensure that workers suffering from an injury have access to vocational consultation services, to favour reintegration into the level of vocational functions held before the injury;

(i) ensure financial assistance is made available to the injured workers where the Board deems it useful or necessary for reintegration into work, during a period of training, education or apprenticeship or in other cases it determines by regulation;

(j) aid in the adaptation of the worker's principal residence where the nature and permanence of the injury necessitates modification to enable the injured worker to engage in homebound employment;

(k) aid in the adaptation of a workplace to meet the needs of the injured worker where the nature and permanence of the injury might otherwise preclude the injured worker from obtaining and or retaining that employment;

(l) arrange for the provision of financial counselling, upon request, for those injured workers in receipt of permanent impairment awards.

## DIVISION VI

## ADMINISTRATION

37.-(1) The body corporate, incorporated under the name "Workmen's Compensation Board" is continued under the name of "Workers' Compensation Board".

(2) The Corporations Act does not apply to the Board, but the Board shall have the capacity of a natural person.

(3) The change in the name of the body corporate does not affect its rights and obligations.

(4) A reference in any Act or regulation to the Workmen's Compensation Board or to the Workmen's Compensation Act shall be deemed a reference to the Workers' Compensation Board and to the Workers' Compensation Act, 1982, respectively.

38. There shall be constituted for the administration of this Act, a corporate board of directors of the Workers' Compensation Board in this Act called the "Corporate Board".

39.-(1) The Lieutenant Governor in Council shall appoint to the Corporate Board for terms not exceeding five years, not more than nine directors, one of whom shall be designated Chairman, another of whom shall be designated Vice-Chairman of Administration and another shall be the Chairman of the Appeals Tribunal appointed under Section 52.

(2) Upon expiry of his term of office the Chairman, Vice Chairman of Administration or other Director is eligible for reappointment.

(3) The remuneration, benefits, and allowances of the Chairman, Vice Chairman of Administration and the other Directors of the Corporate Board shall be determined by the Lieutenant Governor in Council and shall be part of the administration expense of the Board.

40.-(1) The Chairman of the Corporate Board is the chief executive officer of the Board and shall preside at all meetings of the Corporate Board unless another Director is designated to act pursuant to subsection 3 herein.

(2) The Vice Chairman of Administration is the chief administrative officer of the Board and shall perform his duties under the general supervision of the Chairman.

(3) In the absence from Ontario of the Chairman, his inability to act, or where the office of Chairman is vacant, his duties shall be performed by a Director designated to act by the Chairman, or, where the Chairman has failed so to designate, by a Director designated to act by the Minister of Labour but in no case shall the Chairman of the Appeals Tribunal be designated to perform the duties of the Chairman.

(4) Whenever it appears that a Director has acted for and instead of the Chairman it shall be presumed that he has so acted in the absence or inability to act of the Chairman, or vacancy in the office of Chairman.

(5) In the absence from Ontario of a Director, his inability to act, or where a vacancy occurs among the Directors the Lieutenant Governor in Council may appoint a person to act for the time being in his stead, or place, and the person so appointed shall have all the powers and perform all the duties, of a Director.

41.-(1) The main offices of the Board shall be situate in the Municipality of Metropolitan Toronto.

(2) The Corporate Board may meet or hold sittings, in any place in Ontario as is considered convenient, and may sit at such times, and conduct proceedings in such manner as it considers appropriate.

(3) A majority of the Directors of the Corporate Board for the time being constitutes a quorum for the transaction of business at meetings of the Corporate Board.

42. Subject to the approval of the Lieutenant Governor in Council, the Board may purchase or acquire real property and construct buildings upon it, and improve and repair the same as it thinks necessary, and may, with like approval, sell or otherwise dispose of any real property, heretofore or hereafter purchased, or acquired.

43. The Corporate Board shall have all the powers necessary to effect and administer the programs, policies and duties given to or conferred upon the Board under this Act, and without limiting the generality of the foregoing, the Corporate Board shall have power to:

(a) establish policies and procedures;

(b) consider and approve annual operating and capital budgets;

(c) consider and approve the investment policies of the Board;

(d) consider and approve programs of compensation and rehabilitation made or to be made available;

(e) make loans and advance monies on such conditions of repayment as the Corporate Board deems acceptable;

(f) establish, maintain and regulate advisory councils and committees, their functions and composition;

(g) call and hold public meetings and hearings to discuss and review the policies and programs of the Board;

(h) enact bylaws, pass resolutions and propose regulations for the conduct of the Board's business and affairs;

(i) review the Act and regulations and make recommendations for amendments thereto;

(j) subject to the approval of the Lieutenant Governor in Council make regulations for the administration of the programs and policies of the Board;

(k) enter into agreement with Canada, the appropriate authority in Canada and any province or territory in Canada providing for co-operation in matters relating to compensation for and rehabilitation of workers disabled by injuries arising out of and in the course of employment;

(l) subject to the approval of the Lieutenant Governor in Council enter into agreements with any state, government or authority outside Canada providing for co-operation in matters relating to compensation for and rehabilitation of workers disabled by injuries arising out of and in the course of employment;

(m) delegate in writing subject to such restrictions as may be imposed by the Board any of its powers and functions to any Director or to any officer, or employee of the Board;

(n) annually determine the average industrial wage in Ontario for the purposes of section 18.

44.-(1) The Corporate Board may appoint officers, and other employees of the Board, as it considers necessary, and may prescribe their duties and powers, and subject to the Crown Employees' Bargaining Act, 1972 fix their remuneration.

(2) Whenever the Corporate Board appoints or directs any person, other than an officer, or employee of the Board, to perform any services, such person shall be paid, for his services, and expenses, such sum as the Chairman may determine.

45. Every copy of or extract from an entry in any book or record of the Board or of or from any document filed with the Board, certified by the secretary of the Board or by such other officer of the Board as may be appointed for that purpose by the Corporate Chairman to be a true copy or extract under the seal of the Board shall be received in any court as evidence of the matter so certified without proof of the secretary's or other officer's appointment, authority of signature.

46.-(1) The fund known as the Workmen's Compensation Board Superannuation Fund, for the payment of superannuation allowances or allowances upon the death or disability of an director, officer or employee of the Board is continued under the name of "Workers' Compensation Board Superannuation Fund."

(2) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations,

(a) providing for contributions to the superannuation fund by the directors, officers and employees of the Board;

(b) providing for the terms and conditions upon which any superannuation or other allowance shall be payable out of the superannuation fund and the persons to whom the superannuation or other allowance may be paid;

(c) providing for the terms and conditions under which agreements may be entered into under subsection 8.

(3) The employees of designated associations for accident prevention formed under subsection 1 of section 126 and the employees of designated corporations for accident prevention, the members of which are employees within the meaning of section 126 shall for the purposes of this section be deemed to be employees of the Board, and every employee in the service of any such association or corporation on the 10th day of April, 1952, shall, for the purposes of this section, be deemed to have entered the service of the Board on the date he last entered the service of his association or corporation.

(4) The Board may designate associations and corporations for the purposes of subsection 3.

(5) The cost of maintaining and administering the superannuation fund shall be deemed part of the cost of the administration of this Act and is chargeable to the compensation fund.

(6) Where a director, officer or employee of the Board becomes a member of the public service of Canada or the civil service of any province of Canada or of the civic service of any municipality or of the staff of any board, commission or public institution established under any Act of the Legislature of any province or of the Parliament of Canada, a sum of money equal to his contributions and credits in the superannuation fund or such portion thereof as the Board, subject to the approval of the Lieutenant Governor in Council, determines, shall be paid out of the superannuation fund into any like fund maintained to provide superannuation benefits for the members of such public, civil or civic service or staff, as the case may be.

(7) Where a member of the public service of Canada or the civil service of any province of Canada or of the civic service of any municipality or of the staff of any board, commission or public institution established under any Act of the Legislature of any province or of the Parliament of Canada becomes a contributor to the superannuation fund and a sum of money is paid into the superannuation fund in respect of the period during which he made contributions as a public, civil or civic servant, or an employee of any board, commission or public institution, the Board, subject to the approval of the Lieutenant Governor in Council, may allow him such credit in the superannuation fund in respect of the sum and the period of service represented thereby as is determined.

(8) Notwithstanding subsection 1 and the regulations made under subsection 2, the Board, subject to the approval of the Lieutenant Governor in Council, may enter into an agreement with any government, municipality, board, commission or public institution mentioned in subsection 6 or 7 to provide reciprocal arrangements for the transfer of contributions and credits and where such an agreement exists such transfer shall be in accordance with the agreement.

47.-(1) Except as provided by this Act, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions whether of fact or law arising under this Act and, except as provided by this Act, the action or decision of the Board therein is final and conclusive and is not open to question or review in any court upon any grounds, and no proceedings by or before the Board shall be restrained by injunction or other process or proceeding in any court, or be removable by application for judicial review pursuant to the Judicial Review Procedure Act or otherwise, into any court.

(2) Without limiting the generality of subsection (1), and except as provided by this Act, such exclusive jurisdiction includes the power of determining:

(a) whether any industry, or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 1 or in Schedule 2 and if so, which of them;

(b) whether any part of any such industry constitutes a part, branch or department of an industry within the meaning and application of this Act;

(c) whether any industry or any part, branch or department of any industry is a successor to an industry, or to any part, branch or department of an industry, which had been, or is, included in Schedule 1 or in Schedule 2;

(d) the average earnings, and the net average earnings of a worker;

(e) the loss of earnings occasioned by an injury;

(f) whether a person is a spouse or child;

(g) the existence of dependancy and the extent of dependancy;

(h) whether a worker is in an industry within this part and is entitled to compensation under it;

(i) whether an employer has contravened section 25;

(j) whether an injured worker has refused to accept suitable alternative employment available to the worker.

48. No Director of the Corporate Board, officer or employee of the Board or any person authorized to make an inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties and with the authority of the Corporate Board, the Board or the Appeals Tribunal, any information obtained by him or that has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

49.-(1) No Director of the Corporate Board, or any officer or employee of the Board, or any person who is engaged by the Board to conduct an examination, test or inquiry or authorized to perform any function, shall be required to give testimony or produce any document in any civil suit or proceeding to which the Board is not a party respecting any information, material, statement or result of any examination test or inquiry acquired, furnished, obtained, made or received in the performance of his duties under this Act.

(2) No action or other proceeding for damages lies against the Board, a Director of the Corporate Board, officer or employee of the Board or any person engaged by the Board to conduct an examination, test or inquiry or authorized to perform any function for an act or omission done or omitted by it or him in good faith in the execution or intended execution of any power or duty under this Act or the regulations.

(3) Subsection 2 does not, by reason of subsections 2 and 4 of section 5 of the Proceedings Against the Crown Act, relieve the Crown of liability in respect of a tort committed by the Board, a Director of the Corporate Board an officer or employee or a person engaged by the Board to conduct an examination, test or inquiry or authorized to perform any function to which it would otherwise be subject and the Crown is liable under that Act for any such tort in like manner as if subsection 2 had not been enacted.

50.-(1) The Chairman, the Vice Chairman of Adminstration of the Corporate Board, the Chairman of Appeals and a Vice Chairman of Appeals shall not, directly or indirectly

(a) have, purchase, take or become interested in an industry to which this Part applies, or a bond, debenture or other security of the person owning it or carrying it on;

(b) have an interest in a device, machine, appliance, process or article, patented or not, which may be required, or used to prevent industrial accidents.

but this section does not apply to securities issued or guaranteed by the government of Canada or a province.

(2) If any such interest as aforesaid comes to be vested in any of the officials mentioned in subsection (1), by will or otherwise by operation of law, and he does not, within three months thereafter sell and absolutely dispose of the interest, he shall cease to hold office.

51. There shall be constituted an Appeals Tribunal to be known as the "Workers' Compensation Appeals Tribunal" to inquire into, hear and determine appeals from decisions, orders and rulings of the Board, and applications under Section 16(2) of this Act.

52.-(1) The Lieutenant Governor in Council shall appoint,

(a) for a term not exceeding five years, a Chairman of the Appeals Tribunal;

(b) for terms not exceeding five years, one or more Vice Chairmen of the Appeals Tribunal; and

(c) for terms not exceeding three years, as many members of the Appeals Tribunal, equal in number, representative of employers and workers respectively as is deemed appropriate.

(2) The remuneration, benefits, and allowances of the Chairman, Vice Chairmen and members of the Appeals Tribunal shall be determined by the Lieutenant Governor in Council and form part of the administration expenses of the Board.

(3) Upon the expiry of their term of office, the Chairman and Vice Chairmen of Appeals are eligible for reappointment.

(4) A member of the Appeals Tribunal shall not be eligible for reappointment after having served as a member of the Appeals Tribunal for six years.

(5) The Chairman of the Appeals Tribunal may appoint such officers, and other employees of the Appeals Tribunal as he considers necessary and may prescribe their duties and powers and, subject to the Crown Employees' Collective Bargaining Act, 1972, fix their renumeration.

(6) A person appointed under subsection 5 shall be deemed to be an employee of the Board for the purposes of section 46.

53.-(1) The Chairman of the Appeals Tribunal is the chief executive officer of the Appeals Tribunal and shall preside at meetings of the Appeals Tribunal and upon all panels of which he is a member.

(2) In the absence from Ontario of the Chairman, his inability to act or where the office of Chairman is vacant, his duties shall be performed by a Vice Chairman or a member designated to act by the Chairman or, where the Chairman has failed so to designate, by a Vice Chairman or member designated to act by the Minister of Labour.

(3) Whenever it appears that a Vice Chairman or a member has acted for and instead of the Chairman, it shall be presumed that he has so acted in the absence or disability of the Chairman, or vacancy in the office of the Chairman.

(4) In the absence from Ontario of a Vice-Chairman or a member, his inability to act or where a vacancy occurs among the Vice-Chairman or members, the Lieutenant Governor in Council may appoint a person to act for the time being in his stead and the person so appointed should have all the powers and perform all the duties of a Vice-Chairman or a member as the case may be.

54.-(1) The main offices of the Appeals Tribunal shall be situate in the Municipality of Metropolitan Toronto.

(2) The Appeals Tribunal, or any panel thereof, may sit and hold hearings in such places in Ontario as are determined by the Chairman of the Appeals Tribunal.

55.-(1) The Appeals Tribunal shall not proceed with or hear or continue to hear a matter unless a quorum of the Tribunal is present throughout the proceeding or hearing.

(2) A quorum shall consist of the Chairman of Appeals or a Vice-Chairman of Appeals sitting alone, or the Chairman of Appeals or a Vice Chairman of Appeals designated by the Chairman to act in place of the Chairman and not less than two members of the Appeals Tribunal to be equal in number and representative of employers and workers.

(3) A quorum may exercise all the jurisdiction and powers of the Appeals Tribunal.

(4) The decision of the majority of the quorum present and constituting the Tribunal is the decision thereof but if there is no majority the decision of the Chairman or Vice-Chairman governs.

56.-(1) The Chairman of Appeals may establish panels of the Appeals Tribunal and a panel has all the jurisdiction and power of the Appeals Tribunal.

(2) The Chairman of Appeals may refer any matter that is before the Appeals Tribunal to a panel and may refer any matter that is before a panel, to the Appeals Tribunal or to another panel, including any question of law or policy.

(3) A panel has all the jurisdiction and power of the Appeals Tribunal and its decision shall be deemed the decision of the Appeals Tribunal.

57.-(1) A panel of the Appeals Tribunal shall consist of:

(a) the Chairman of Appeals or a Vice Chairman of Appeals sitting alone; or

(b) the Chairman of Appeals and two Vice Chairmen of Appeals; or

(c) the Chairman of Appeals or a Vice Chairman of Appeals, and two members, representative of employers and workers.

(2) A Vice Chairman of Appeals shall preside on all panels where the Chairman of Appeals is not a member of such panel.

(3) Subject to subsection 4 a panel shall not proceed or continue with a matter unless all appointed to the panel, including the Chairman of Appeals, Vice Chairmen of Appeals and members, as the case may be, are present, and remain present throughout the proceedings.

(4) The Chairman of Appeals may remove from a panel, fill any vacancy thereon or designate a member of the Appeals Tribunal to act in the place and stead of a member who refuses or is unwilling to act thereon.

(5) The decision of the majority of a panel consisting of three persons is the decision of the Appeal Tribunal and if there is no majority the decision of the chairman of the panel governs.

58. Subject to sections 77 and 85, the Appeals Tribunal has, and shall exercise, exclusive jurisdiction to inquire into, hear and determine an appeal from a decision, direction, order or ruling of the Board and to make any order or direction that may be made by the Board and the order or direction of the Appeals Tribunal or a panel thereof is final and conclusive and not open to question or review in any court upon any grounds and no proceedings by or before the Appeals Tribunal or a panel thereof shall be restrained by injunction or other process or proceeding in any court or be removable by application or judicial review pursuant to the Judicial Review Procedure Act 1971, or otherwise, into any court.

59. Sections 48 and 49 shall apply with all necessary modifications to the Chairman, Vice Chairman and members of the Appeals Tribunal, and to an officer or employee of the Appeals Tribunal and any person engaged by the Appeals Tribunal to conduct an examination, test or inquiry, or authorized to perform any function under this Act.

60. The accounts of the Board shall be audited by the Provincial Auditor or under his direction by an auditor appointed by the Lieutenant Governor in Council for that purpose and the salary and remuneration of the auditor so appointed shall be paid by the Board as part of its administration expenses.

61.-(1) The Board shall after the close of each year file with the Minister of Labour an annual report upon the affairs of the Board.

(2) The Minister of Labour shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session and the report shall then be referred to a standing committee of the Assembly.

(3) The Board shall after the close of each year file with the Superintendent of Insurance, in such detail as he may require, a report on the compensation fund and the Superintendent of Insurance shall report thereon the Minister of Labour.

(4) The Superintendent of Insurance shall, whenever required by the Lieutenant Governor in Council or the Board, examine into the affairs and business of the Board for the purpose of determining as to the sufficiency of the compensation fund and shall report thereon to the Lieutenant Governor in Council or the Board.

## DIVISION VII

## PROCEDURE

62.-(1) Where a worker suffers an injury or an industrial disease, the worker or in case of his death the spouse or a dependant of the worker shall give notice thereof to the employer.

(2) Subject to subsection (4), no benefits are payable unless,

(a) notice of the injury or industrial disease is given to the employer as soon as practical upon the occurence and before the worker has voluntarily left the employment, or

(b) a claim for benefits is made within six months from the date of the injury or disease or in the case of death within six months from the date of death.

(3) The notice shall give the name and address of the worker and is sufficient if it states the cause of the injury or industrial disease and where it occurred.

(4) Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in a notice does not bar the right to benefits if in the opinion of the Board the employer was not prejudiced thereby or, where the benefits are payable out of the compensation fund, if the Board is of opinion that the claim is a just one and ought to be allowed.

63.-(1) Every employer, within three days after he learns of the occurrence of an injury or industrial disease to a worker in his employment by which the worker suffers loss of earnings or that necessitates medical aid, shall notify the Board in writing of,

(a) the occurrence of the injury or industrial disease and the nature of it;

(b) the time of its occurrence;

(c) the name and address of the worker;

(d) the place where the accident happened;

(e) the name and address of the physician or surgeon, if any, by whom the worker was or is attended for the injury or disease;

and shall in any case furnish such further details and particulars respecting any injury or disease or claim to benefits as the Board may require.

(2) Every employer who makes default in reporting or furnishing particulars of any injury or industrial disease shall, in addition to any other penalty or liability, pay to the Board the amount prescribed by the regulations.

(3) Where a worker or dependant has given the notice prescribed by section 62 and a claim for benefits has not been commenced by the employer pursuant to subsection (1), the worker, spouse or dependant may commence a claim for benefits by delivering to the Board an application for benefits in the form prescribed by the regulations.

64.-(1) The Board shall determine its own practice and procedure in relation to applications and proceedings and may, subject to the approval of the Lieutenant Governor in Council make rules and regulations governing such practice and procedure and prescribe such forms as are considered necessary.

(2) Where a person or organization has, in the Board's opinion, a sufficient interest in a matter, the Board may, on its own motion or on request of that person or organization, grant to that person or organization status as a party of record.

65.-(1) Upon request the Board shall give a claimant full access to and copies of the Board's file and records respecting the claim and shall provide like access and copies to a representative of the claimant upon presentation of a written authorization for that purpose signed by the claimant, provided there is a disputable issue.

(2) Where an employer contests an application for benefits the employer shall be granted access to and copies of only those records of the Board which the Board determines to be relevant to the issue or issues in dispute and the Board shall provide like access and copies to a representative of the employer upon presentation of a written authorization for that purpose signed by the employer.

(3) Where a claimant, employer or party of record is aggrieved by a decision of the Board made under this section, an appeal lies therefrom to the Appeals Tribunal in the manner prescribed in the regulations.

66.-(1) The Board has power to,

(a) summon and enforce attendance of witnesses and compel them to give evidence on oath and to produce such documents or things as the Board considers requisite to the full investigation and consideration of matters within its jurisdiction, in the same manner as a court of record in civil cases;

(b) accept such oral or written evidence as, in its discretion, it considers proper whether admissible in a court of law or not;

(c) in its discretion, to allow to a worker or a spouse, child or dependant of a deceased worker, or the witnesses, such expenses and allowances as may be incurred in the prosecution of a claim under this Act, and such expenses and allowances shall form part of the administration expenses of the Board;

(d) require any person or corporation to post and keep posted, upon their premises, in a place or places where they are most likely to come to the attention of all persons concerned, any notices that the Board considers necessary to bring to the attention of such persons matters relating to this Act;

(e) enter into any premises where work is being done, or has been done, or will be done by any worker, or in which the employer carries on business whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, including books of account, and interrogate any person respecting any matter, and post therein any notice;

(f) authorize any person to do anything that the Board may do and act upon the report of such person.

(2) Where the Board has made an overpayment of any benefits it may write off such overpayment, recover the amount of an overpayment by reducing or suspending any future payment of benefits to the person who received such overpayment or take legal action to recover the amount of such overpayment.

67. The proceedings and decisions of the Board are not subject to, or affected by, the Statutory Powers Procedure Act 1971, or amendments thereto, or by any rules or regulations made thereunder and the provision of this Act and the regulations shall prevail notwithstanding anything contained in the Statutory Powers Procedure Act.

68. All decisions of the Board shall be promptly communicated to the parties of record in writing.

69.-(1) An order of the Board for the payment of benefits by an employer who is individually liable to pay the benefits or any other order of the Board for the payment of money made under the authority of this Part, or a copy of any such order certified by the secretary to be a true copy, may be filed with the clerk of any county or district court and, when so filed, becomes an order of that court and may be enforced as a judgment of the court.

(2) For the duties performed by him in connection with the filing of an order or certificate of the Board pursuant to this section or section 121 , such clerk is entitled to a fee of $1, and, notwithstanding any other provision or rule, any proceeding provided for by either of such sections may be carried on by the Board by post without the necessity of personal attendance at any office.

70.-(1) The Board may, at any time, if it considers it advisable, reconsider any decision order or ruling made by it, and vary, amend, or revoke such decision order or ruling.

(2) A claimant, employer or party of record may request the Board to reconsider its decision, order or ruling by filing an application for reconsideration in the time and manner prescribed by regulations.

(3) Upon receipt of an application for reconsideration the Board shall, as soon as practicable, notify the applicant whether the application for reconsideration has been granted or refused.

(4) Whenever an application for reconsideration is granted, or the Board reconsiders a matter on its own motion, the Board shall inform a claimant, employer or party of record of the issue or issues under reconsideration and afford such persons in opportunity to make written submissions with respect thereto.

(5) Every decision on reconsideration, together with reasons therefore, shall be recorded in writing and promptly communicated to the claimant, employer or party of record.

71. Where an issue arises as to a medical matter or medical question, the Board may, on its own motion, state a case to a Medical Review Panel. Thereupon, a Medical Review Panel shall be constituted as prescribed by section 82.

72.-(1) Where a claimant, employer or party of record has applied for reconsideration of a Board decision and the Board has refused to reconsider its decision or, upon reconsideration has rendered a decision with which a party of record is aggrieved, a party of record may appeal the decision to the Appeals Tribunal in the time and manner prescribed by the regulations.

(2) Upon receipt of a notice of appeal, the Appeal Tribunal shall, as soon as practicable, notify the Board, and the claimant, employer or party of record of the appeal, the issue or issues in respect of which the appeal is brought and furnish the same with copies of any written submissions made with respect thereto.

(3) The Appeal Tribunal may direct that any periodic payments under a decision of the Board be paid notwithstanding that an appeal is taken thereform and any amounts paid under the direction may be written off or recovered by reducing or suspending future benefits, or through legal action as the Appeal Tribunal may direct.

73. The Appeals Tribunal may determine its own practice and procedure and may, subject to the approval of the Lieutenant Governor in Council, make regulations in respect thereto, and prescribe such forms as it deems necessary.

74. Sections 65, 66 and 67 apply with all necessary modifications, to the Appeals Tribunal.

75.-(1) The Appeals Tribunal may confirm, vary, reverse, or uphold any decision of the Board, and may make any order with respect to a matter before it as is capable of being made by the Board.

(2) A decision of the Appeals Tribunal shall be effective from the date of original application to the Board or such earlier date as the Appeals Tribunal deems appropriate provided that in no event shall the Appeals Tribunal make its order effective at a time prior to the date the claimant became entitled to compensation under this Act.

(3) Every decision of the Appeals Tribunal, disposing of an appeal, together with its findings and reasons, shall be made in writing.

76. Section 70 applies with all necessary modifications to an order of the Appeals Tribunal.

77.-(1) Except where the Board has stated a case pursuant to section 71, the Appeals Tribunal may, of its own motion, state a case to a Medical Review Panel, and thereupon a Medical Review Panel shall be constituted in the manner provided by section 82.

(2) Whenever a claimant, employer or party of record has made application for a medical review pursuant to section 81, the Appeals Tribunal may stay that application on the grounds that it intends to review the decision of the Board which is the subject of the application for medical review.

(3) Where an application is stayed under subsection 2, the Appeal Tribunal shall proceed as though an appeal had been taken under section 72 and upon a decision being rendered by the Appeals Tribunal, a person aggrieved thereby may renew the application for medical review in the manner prescribed in the regulations.

78. Where a decision of the Appeals Tribunal turns upon an interpretation of general law or the policy of this Act, the Corporate Board may, in its discretion, stay the enforcement or execution of the order of the Appeals Tribunal, hear and determine the issue of general law or policy, and direct the Appeals Tribunal to reconsider the matter in light of the Corporate Board's determination.

## DIVISION VIII

## MEDICAL EXAMINATIONS AND REVIEWS

79.-(1) A worker who has made claim for compensation, or to whom compensation is payable under this Act shall, if requested by the Board or Appeals Tribunal, submit himself for medical examination by a medical practitioner provided by the Board or Appeals Tribunal as the case may be.

(2) If a worker contravenes subsection (1) or in any way obstructs an examination,

(a) his right to compensation is suspended until the examination has taken place, and

(b) his condition as found by the examination shall, unless the Board otherwise directs, be deemed to have been his condition at the date for which the examination was called.

80.-(1) Any medical report or medical opinion in respect of a worker or deceased worker, whether prepared by or provided to the employer, agent of the employer, Board, Appeals Tribunal or a Medical Review Panel from any source whatsoever, or otherwise prepared, shall, upon request by any of the above, be made available to the worker or claimant for benefits.

(2) A worker or claimant for benefits may designate a representative to receive medical reports and opinions on his or her behalf, and the persons and agencies referred to in subsection 1, shall release medical reports or opinions to that representative upon presentation of a written authorization, signed by the worker or claimant.

(3) Where an employer contests a medical decision of the Board he shall be granted access only to those medical reports and opinions which the Board deems relevant to the medical issue in dispute.

(4) Where an employer is aggrieved by a decision made by the Board under subsection 3 he may appeal the decision to the Appeals Tribunal in the manner prescribed by the regulations.

(5) Before granting access to the employer under subsection 3 the Board shall notify the worker or claimant for compensation of the medical reports or opinions it deems relevant to permit written submissions or objections to be made within such time as may be specified before granting access to the employer.

(6) Where a worker or claimant is aggrieved by a decision of the Board pursuant to subsection (3), subsection (4) applies with all necessary modifications.

81.-(1) Where a claimant, employer or party of record has applied to the Board for reconsideration of a medical decision of the Board and the Board has refused to reconsider such decision or, upon reconsideration, has rendered a medical decision by which the person is aggrieved, the person aggrieved may, within 90 days from the date upon which the decision on reconsideration or refusal to reconsider, as the case may be, is made, or such further time as the Appeal Tribunal may allow, make application for medical review as prescribed in the regulations.

(2) An application for medical review filed pursuant to this section shall be accompanied by a certificate from a physician stating that in the opinion of the physician there is a bona fide medical dispute to be resolved, and such certificate shall include a statement of particulars sufficient to define the questions in dispute.

82.-(1) The Lieutenant Governor in Council shall appoint medical specialists in particular classes of injuries and disabilities to form separate rosters for such particular classes of injuries and disabilities from which members of Medical Review Panels may be selected as provided herein.

(2) Upon receipt of an application for medical review the Appeals Tribunal shall, within 30 days, by notice by registered mail, require each of the worker or claimant for compensation, and the employer to nominate, within ten days after receipt of the notice, one specialist from a roster designated by the Appeals Tribunal.

(3) No specialist may be a member of a Medical Review Panel who,

(a) examines workers on behalf of the employer,

(b) has treated the worker or a member of the worker's family,

(c) has acted as a consultant in the treatment of the worker, or

(d) is a partner of, or practices medicine together with such specialist,

and in no case shall there be on the same panel, specialists who are partners or who practice medicine together.

(4) In the event that

(a) the worker is self-employed; or

(b) the worker is the child, parent, brother, sister, husband, or wife of the employer; or

(c) the worker is a partner in, or member of the firm that is the employer; or

(d) the employer has ceased to carry on business in the industry in which the injury or disability occurred; or

(e) a party other than the applicant for medical review fails or neglects to nominate a specialist within ten days of the notice provided in this section,

the Appeals Tribunal shall nominate a specialist as if it were entitled to do so under subsection 2.

(5) If the person making the application under this section shall fail to or neglect to nominate a specialist within ten days of the receipt of the notice, the application shall be deemed abandoned but such failure to nominate shall not preclude a further and timely application for medical review under this section.

(6) The Appeals Tribunal shall, within 15 days from the receipt of the nominations, if the specialists are prepared to accept their nominations, appoint the specialists as members of a Medical Review Panel to examine the worker, and the two specialists together shall select a chairman, and the three shall constitute the Medical Review Panel.

(7) In the event that a specialist nominated pursuant to this section is unwilling or unable to act, another specialist shall be nominated and appointed in his place in the same manner as provided in this section.

(8) Where the Appeals Tribunal exercises its power to state a case to a Medical Review Panel pursuant to subsection 77(1), the panel shall be nominated and appointed in the same manner as provided in this section except that where the case provided for by subsection 82(4) shall arise, the specialist shall be nominated by the Minister of Labour.

83.-(1) After the appointment of a Medical Review Panel the Appeals Tribunal shall prepare a list of medical questions to be determined by the Medical Review Panel and such list shall be accompanied by a review of relevant facts, and a summary of applicable law and policy.

(2) Before its submission to the Medical Review Panel, the list of medical questions referred to in subsection 1 shall be sent to the parties for their review and comment and where a dispute arises with respect to the substance and content of the list of medical questions, or any accompanying statement of relevant facts, law or policy, the decision of the Appeals Tribunal shall be final and conclusive thereto.

(3) Where an application for medical review is received by the Appeals Tribunal and the Appeals Tribunal determines that there is no medical issue in dispute it shall inform the parties thereof in writing with reasons.

84.-(1) Within a reasonable time after the receipt of the list of medical questions, but in no case later than 20 days from such receipt, the chairman of the Medical Review Panel shall arrange for the examination of the worker by at least one member of the Medical Review Panel and the review of any records of the Appeals Tribunal deemed relevant by the Medical Review Panel.

(2) For the purposes of its inquiry a Medical Review Panel shall have full and free access to all Board and Appeals Tribunal records concerning the medical questions in issue and shall have the power to direct that further inquiries be made or additional information or opinions be secured, and any such direction for further inquiry or request for additional information or opinion shall be disclosed to the parties together with the results thereof.

(3) In no case shall there be a private communication between any member of a Medical Review Panel and any doctor who would be excluded from the Medical Review Panel by virtue of the provisions of section 82(3) but in all cases the Medical Review Panel shall invite the physician who certified pursuant to section 81(2) that there was a bona fide medical dispute to be resolved to make any representations the physician considers advisable.

(4) Subject to the provisions of this section, a Medical Review Panel may receive and accept evidence that, in its discretion, it deems fit, proper and essential to the determination of the medical questions before it, and may determine its own procedure in that regard.

85.-(1) The decision of a majority of a Medical Review Panel on any medical question is the decision of the Medical Review Panel.

(2) Within a reasonable time after the examination of the worker, but in no case more than 30 days thereafter, the chairman of the Medical Review Panel shall submit to the Appeals Tribunal the answers to the list of medical questions stated to the Medical Review Panel and such answers shall be final and conclusive and are binding upon the Appeals Tribunal, the Board, the worker or claimant for compensation, the employer and any party of record.

(3) The answers given by a Medical Review Panel are not subject to any appeal under this Act nor to review in any court of law upon any grounds and no decision of a Medical Review Panel shall be restrained by injunction or other process or proceeding in any court or be removable by application for judicial review pursuant to the Judicial Review Procedures Act, or otherwise into any court.

(4) A Medical Review Panel may, in addition to, and separate from, the answers required to be submitted under subsection 1, make a report or recommendation to the Board or Appeals Tribunal as the case may be, on any matter arising out of its examination and review.

(5) Upon receipt of the answers of the Medical Review Panel, and any report of recommendation contemplated by subsection 4, the Appeals Tribunal, as the case may be, shall send a copy of such answers and report or recommendations to the parties, shall receive their submissions thereupon, and shall review the matter in light of the answers of the Medical Review Panel.

86.-(1) Where a party of record alleges that new facts not previously in existence have arisen since the decision of a Medical Review Panel was made such party may make application to the Appeals Tribunal for a further medical review as provided in the regulations.

(2) Such application shall contain a statement concerning the new facts alleged to have arisen and a certificate by a physician stating that in his opinion the new facts are such as to call into question the validity of the prior medical decision together with medical reasons supporting that opinion.

(3) Upon receipt of an application under this section, the Appeals Tribunal shall review the application and determine whether a further medical review is justified, and if justified, whether the further medical review is to be undertaken by the Medical Review Panel that made the decision to be further reviewed or whether it is advisable to nominate and appoint a new medical Review Panel, and the decision of the Apeals Tribunal is final and conclusive in the same manner, and to the same extent, as provided in section 58.

(4) In the event that the Appeals Tribunal deems it advisable to nominate and appoint a new Medical Review Panel such Medical Review Panel shall be nominated and appointed in the manner provided by section 82.

87. The provisions of sections 79 to 86 apply, with all necessary modifications to the Board in exercising the power conferred by section 71.

88.-(1) The Lieutenant Governor in Council may make regulations as to any matter or thing which appears necessary or advisable for the effectual administration of sections 82 to 86.

(2) All costs and expenses associated with the administration of sections 82 and 86, including the remuneration, expenses and allowances of Medical Review Panel members, shall be paid by the Ministry of Labour and chargeable by that Ministry to the Board and such charges shall form part of the administration expenses of the Board.

89.-(1) The Minister of Labour shall establish the office of Worker Adviser and shall pay such remuneration and expenses as may be required to carry out the functions assigned it by the Minister.

(2) The Board shall reimburse the Minister for the remuneration and expenses referred to in subsection 1.

90.-(1) The Minister of Labour shall establish the office of Employer Adviser and shall pay such remuneration and expenses as may be required to carry out the functions assigned it by the Minister.

(2) The Board shall reimburse the Minister for the remuneration and expenses referred to in subsection 1.

## DIVISION IX

## COMPENSATION FUND

91.-(1) A compensation fund shall be provided by contributions to be made by the employers in the classes or groups of industries for the time being included in Schedule 1, and benefits payable in respect of injuries that happen in any industry included in any of such classes or groups shall be paid out of the fund.

(2) Notwithstanding the generality of the description of the classes for the time being included in Schedule 1, none of the industries included in Schedule 2 shall form part of or be deemed to be included in any of such classes, unless it is added to Schedule 1 by the Board under this Part.

92. The Board shall maintain the compensation fund and reserves at a level which provides reasonable assurance that future payments may be made out of the funds for the purpose of paying benefits under this Part, and the costs and expenses of the administration of this Part.

93.-(1) In determining the contributions to be made by the employers in the classes or groups of industries for the time being included in Schedule 1, the Board is not obligated to provide or maintain in each year a reserve fund at all times fully equal to the capitalized value of the payments of compensation which will become due in future years in respect of injuries occurring during the year.

(2) It is not necessary for the reserve fund to be equal as to all classes or groups and, for purposes of sections 91 and 116, it is discretionary with the Board to provide for a larger reserve fund in one or more of the classes or groups than in another or others of them.

(3) Where an employer is likely to go out of business, or cease operations in Ontario, the Board may fully capitalize the employer's injury costs and assess and levy a supplementary assessment against the employer.

(4) The assesssment and levy referred to in subsection 3 shall stand as a special lien upon all the property, real or personal of the employer.

(5) Subsection 3 of section 100 does not apply to subsection 3.

94. If at any time there is not money available for payment of the compensation that has become due without resorting to the reserves, the Board may pay such compensation out of the reserves and shall make good the amount withdrawn from the reserves by making a special assessment upon the employers liable to provide the compensation or by including it in a subsequent assessment, but, if for any reason it is considered inexpedient to withdraw the amount required from the reserves, the Lieutenant Governor in Council may direct that the same be advanced out of the Consolidated Revenue Fund and in that case the amount advanced shall be collected by a special assessment and when collected shall be paid over to the Treasurer of Ontario.

95.-(1) Subject to the approval of the Lieutenant Governor in Council, the Board may by regulation,

(a) rearrange any of the classes for the time being included in Schedule 1, and withdraw from any class any industry included in it and transfer the industry wholly or partly to any other class or form the industry into a separate class, or exclude it from the operation of this Part;

(b) establish other classes including any of the industries that are for the time being included in Schedule 2, or are not included in any of the classes in Schedule 1;

(c) add to any of the classes for the time being included in Schedule 1 any industry that is not included in any of such classes;

(d) exclude any trade, employment, occupation, calling, avocation or service from any industry for the time being included under this Part or at any time brought under this Part.

(2) Where in the opinion of the Board the hazard to workers in any of the industries embraced in a class is lesser or greater than that in another or others of such industries, or where for any other reason it is deemed proper to do so, the Board may subdivide the class into groups, transfer an industry wholly or partly to an existing group within the class and upon doing so, the Board may fix the percentages or proportions of the contributions to the compensation fund that are to be payable by the employers in each group.

(3) Separate accounts shall be kept of the amounts assessed, collected and expended in respect of every class or group, but for the purpose of paying benefits the compensation fund shall, nevertheless, be deemed one and indivisible.

(4) Where in the opinion of the Board sufficient precautions have not been taken for the prevention of injuries or industrial disease to workers in the employment of an employer or where the working conditions are not safe for workers or where the employer has not complied with the regulations respecting first aid, the Board may add to the amount of any contribution to the compensation fund for which the employer is liable such a percentage thereof as the Board considers just and may assess and levy the same upon the employer.

(5) Any additional percentage levied and collected under subsection 4 shall be added to the compensation fund or applied in reduction of the assessment upon the other employers in the class or group to which the employer from who it is collected belongs as the Board may determine.

(6) Where, in the opinion of the Board, the ways, works, machinery and appliances in any industry conform to modern standards in such manner as to reduce the hazard of injury or industrial disease to a minimum and the Board is convinced that all proper precautions are being taken by the employer for the prevention of injuries and industrial disease and where the accident record of the employer has in fact been consistently good, the Board may reduce the amount of any contribution to the compensation fund for which such employer is liable.

(7) Where the work injury frequency and the injury or industrial disease cost of the employer are consistently higher than that of the average in the industry in which he is engaged, the Board, as provided by the regulations, may increase the assessment for that employer by such a percentage thereof as the Board considers just, and may assess and levy the same upon the employer, and may require the employer to establish one or more safety committees at plant level.

(8) The Board, if satisfied that the default was excusable, may in any case relieve the employer in whole or in part from liability under subsection 4 and subsection 7.

96. The powers conferred by section 95 may be exercised from time to time and as often as in the opinion of the Board occasion may require.

97. The Board may, upon the application of an employer, add to Schedule 1, for such time and upon such terms and conditions as the Board may determine, any industry or part of an industry, or department of work or service, of such employer.

98. The Board may, upon the application of an employer, add to Schedule 2, for such time and upon such terms and conditions as the Board may determine, any industry or part of an industry, or department of work or service, of such employer not in Schedule 1.

99. Where a worker of an employer to which Part I applies suffers an injury for which benefits are payable under this Act, and the Board is satisfied that the injury was caused by the negligence of some other employer or employers to which Part I applies or their workers acting in the course of their employment, the Board may direct that the benefits awarded in any such case, or a portion of them, shall, where the employer is in Schedule 1, be charged against the class or group to which such other employer or employers belong and to the injury cost record of such employer or employers, and where the employer is in Schedule 2, be charged to that employer.

100.-(1) For the purposes of this section "principal" means a person who carries on or does not carry on an industry to which Part I applies.

(2) Unless the Board finds and decides that the responsibility of a contractor or subcontractor is sufficient protection to the worker thereof for the benefits payable under Part I, the principal shall be deemed the employer of the workers of his contractor or subcontractor unless the contractor or subcontractor is assessed or added and assessed as an employer in Schedule 1 or unless the contractor or subcontractor is in respect of the work liable to pay benefits as an employer in Schedule 2.

(3) A principal shall ensure that any sum that his contractor or subcontractors are liable to contribute to the compensation fund is paid and upon failure to do so is personally liable to pay such sum to the Board and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to exercise in case of an assessment.

(4) Where a principal has made payment or is liable to make payment under this section the principal is entitled to be reimbursed by the contractor or subcontractor and may withhold any sum paid or to be paid out of any monies payable to the contractor or subcontractor, and any questions as to the right to reimbursemenet or to withhold shall be determined by the Board.

(5) Nothing in this section prevents a worker from claiming benefits or the Board from collecting contribution to the compensation fund from the contractor or any subcontractor instead of the principal.

101.-(1) Where a licence is granted under The Crown Timber Act and timber is cut by a person other than the licensee, the licensee shall see that any sum that the person engaged in the cutting of such timber is liable to contribute to the compensation fund is paid and, if the licensee fails to do so, he is personally liable to pay such sum to the Board, and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

(2) Where the licensee is liable to make payment to the Board under subsection 1, he is entitled to be indemnified by the person who should have made such payment and is entitled to withhold out of any indebtedness due to such person a sufficient amount to answer the same and all questions as to the right to and the amount of any such indemnity shall be determined by the Board.

## STATEMENTS BY EMPLOYERS

102.-(1) Subject to the regulations, every employer shall on or before such date as shall be prescribed by the Board, and at such other time or times as the Board may by order or regulation require, prepare and transmit to the Board in the manner prescribed by the Board a statement of the amount of the wages earned by all his workers during the year then last past or any part thereof specified by the Board and of the amount that he estimates he will expend for wages during the then current year or any part thereof specified by the Board, and such additional information as the Board may require, both certified to be accurate by the employer or his authorized representative or where the employer is a corporation, by an officer of the corporation or an authorized representative of the corporation having a personal knowledge of the matters to which the statements relate.

(2) Where an industry coming within any of the classes for the time being included in Schedule 1 is established or commenced on or after the 1st day of January in the then current year, the employer shall forthwith notify the Board of the fact and prepare and transmit to the Board a statement of the amount that he estimates he will expend for wages for the remainder of the year and such other information as the Board may require, certified to be accurate in the manner prescribed by subsection 1.

(3) Every employer shall keep in such form and with such detail as may be required for the purposes of this Act a careful and accurate account of all wages paid to his employees and such account shall be kept within Ontario and shall be produced to the Board and its officers when so required.

(4) Where the business of the employer embraces more than one branch of business or class or group of industry, the Board may require separate statements to be made as to each branch or class or group of industry, and such statements shall be made verified and transmitted as provided by subsection 1.

(5) If any employer does not make and transmit to the Board the prescribed statement within the prescribed time, the Board may base any assessment or supplementary assessment thereafter made upon him on such sum as in its opinion is the probable amount of the payroll of the employer and the employer is bound thereby, but, if it is afterwards ascertained that such amount is less than the actual amount of the payroll, the employer is liable to pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed on the basis of his payroll.

(6) Where an employer ceases to be an employer within the meaning of this Act he shall, within 10 days thereafter, notify the Board by registered mail and shall at the same time transmit a statement of the total amount of wages earned by all his workers in the portion of the then current year during which he has continued in business.

(7) If an employer does not comply with subsections (1), (2), (3), (4), or (6), or if any statement made thereunder is not a true and accurate statement of any of the matters required to be set forth in it, the employer for every such non-compliance and for every default or delay in furnishing any such statement or insufficiency of estimate of expenditure for wages is liable to pay an additional percentage of assessment or to pay interest, as fixed by the Board.

103.-(1) Every assessor of a township, town or village shall yearly on or before the last day for completing his assessment role make a return to the Board upon forms provided by the Board for the purpose showing the names, addresses, nature of business, and usual number of employees, of all employers of workers carrying on in the municipality any industry or business.

(2) The Board may make remuneration for such return out of the compensation fund.

104.-(1) The Board and any member of it and any officer or person authorized by it for that purpose have the right to examine the books and accounts of the employer and to make such other inquiry as the Board considers necessary for the purpose of ascertaining whether any statement furnished to the Board under section 102 is an accurate statement of the matters that are required to be stated therein or of ascertaining the amount of payroll of any employer or of ascertaining whether any industry or person is under the operation of this Part and whether in Schedule 1 or Schedule 2, and for the purpose of any such examination and inquiry the Board and the person so appointed has the powers of a commission under Part II of The Public Inquiries Act, 1971, which Part applies to the examination or inquiry as if it were an inquiry under that Act.

(2) The Board may, for the purpose of the examination mentioned in subsection 1, apply ex parte to a judge of the county or district court of the country or district in which the books and accounts are located for an order authorizing an officer of the Board, together with such members of the Ontario Provincial Police Force or other police officers as he calls on to assist him, to enter and search, if necessary by force, any building, receptacle or place for books and accounts of the employer and to seize and take away any such books and accounts for the purpose of the examination and retain them in his possession until such examination is completed.

(3) No employer or any other person shall obstruct or hinder the making of the examination and inquiry mentioned in subsection 1 or refuse to permit it to be made.

(4) Every member of the Board and every officer or person authorized by it to make examination or inquiry under this section have power and authority to require and take affidavits, affirmations and declarations as to any matter of such examination or inquiry and for all purposes of this Act to administer oaths, affirmations and declarations and certify the same having been made.

105.-(1) If a statement is found to be inaccurate, the assessment shall be made on the true amount of the payroll as ascertained by such examination and inquiry, or, if an assessment has been made against the employer on the basis of his payroll being as shown by the statement, the employer shall pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed if the amount of the payroll had been truly stated, and in addition a sum equal to such difference may be levied.

(2) The Board, if satisfied that the inaccuracy of the statement was not intentional and that the employer honestly desired to furnish an accurate statement, may relieve him from the payment of the additional sum provided for by subsection 1 or any part of it.

106.-(1) The Board and any member of it and any officer or person authorized by it for that purpose have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the compensation fund and the premises connected with it and every part of them for the purpose of ascertaining whether the ways, works, machinery or appliances therein are safe, adequate and sufficient and whether all proper precautions are taken for the prevention of accidents to the worker employed in or about the establishment or premises and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose that the Board considers necessary for the purpose of determining the proportion in which such employer should contribute to the compensation fund.

(2) No employer or any other person shall obstruct or hinder the making of any inspection under subsection 1, or refuse to permit it to be made.

## ASSESSMENTS

107.-(1) The Board shall in every year assess and levy upon the employers in each of the classes or groups such percentage of payroll or such other rate or such specific sum as, allowing for any surplus or deficit in the class or group, it deems sufficient to pay the benefits during the current year in respect of injuries or death to workers in the industries within the class or group, and to provide and pay the expenses of the Board in the administration of this Part for that year or so much thereof as may not be otherwise provided for, and also to maintain a reserve fund to pay the benefits payable in future years in respect of claims in that class or group for injuries and death happening in that year, of such an amount as the Board considers necessary to prevent the employers in future years from being unduly or unfairly burdened with payments that are to be made in those years in respect of injuries or death that have previously happened.

(2) Such assessments, if the Board sees fit, may be levied provisionally upon the estimate of payroll given by the employer or upon an estimate fixed by the Board and, after the actual payroll has been ascertained, may be adjusted to the correct amount, and the payment of assessments, if the Board sees fit, may be divided into instalments.

108.-(1) For the purposes of assesssment the Board may, from time to time prescribe by regulation a maximum amount of assessable wages and where the assessment is based on the payroll of the employer and there is included in it the wages or salary of a worker who has been paid more than such maximum amount of assessable earnings the excess shall be deducted from the amount of the payroll and the assessment shall be based on the amount so reduced.

(2) It is not necesary for the assessments upon the employers in a class or group to be uniform, but they may vary for each individual industry or plant in relation to the hazard of such industry or plant, and the Board may levy a differential rate of assessment on each employer in the class or group accordingly.

(3) A system of experience rating may, if considered proper, be adopted.

109.-(1) The Board shall determine and fix the percentage, rate or sum for which each employer is assessed under section 107 or 108, or the provisional amount thereof, and each employer shall pay to the Board the amount or provisional amount of his asssessment within one month or such other time as the Board may fix after notice of the assessment and of the amount has been given to him, or, where payment is to be made by instalments, he shall pay the first instalment within such time and the remaining instalment or instalments at the time or times specified in the notice.

(2) The notice may be sent by post to the employer and shall be deemed to have been given to him on the day on which the notice was posted.

(3) When it appears at any time that a statement or estimate of payroll upon which an assessment or provisional amount of assessment is based is too low, the employer shall upon demand pay to the Board such sum, to be fixed by the Board, as is sufficient to bring the payment of assessment up to the proper amount, and payment of any such sum may be enforced in the same manner as the payment of any assessment may be enforced.

110. If the amount realized from any assessment is insufficient for the purpose for which the assessment was made, the Board may make supplementary assessments to make up the deficiency and section 107 applies to such assessments, but the Board may defer assessing for such deficiency until a subsequent assessment is made and then include it in such assessment.

111.-(1) Where any deficiency in the amount realized from any assessment in any class or group is caused by the failure of some of the employers in that class or group to pay their share of the assessment or by any disaster or other circumstance that in the opinion of the Board would unfairly burden the employers in that class or group, the deficiency or loss shall be made up by supplementary assessments upon the employers in all the classes and section 107 applies to such assessments, but the Board may defer assessing for such deficiency or loss until a subsequent assessment is made and then include it in such assessment.

(2) The Board, where it considers proper, may add to the assessment for any class or group or for all the classes in Schedule 1 a percentage or sum for the purpose of raising special funds to be laid aside and used to meet the loss arising from any disaster or other circumstance that, in the opinion of the Board, would unfairly burden the employers in any class or group.

112. If and so far as any deficiency mentioned in sections 110 and 111 is afterwards made good wholly or partly by the defaulting employer, the amount that has been made good shall be apportioned between the other employers in the proportions in which the deficiency was made up by them by the payment of supplementary assessments upon them and shall be credited to them in making a subsequent assessment.

113.-(1) If for any reason an employer liable to assessment is not assessed in any year, he is nevertheless liable to pay to the Board the amount for which he should have been assessed, and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

(2) Any sum collected from an employer under subsection 1 shall be taken into account by the Board in making an assessment in a subsequent year on the employers in the class or group to which such employer belonged.

114. Notwithstanding that the deficiency arising from a default in the payment of the whole or part of any assessment has been made up by a special assessment, a defaulting employer continues liable to pay to the Board the amount of every assessment made upon him or so much of it as remains unpaid.

115.-(1) Where in any industry for the time being included in Schedule 1, a change of ownership or employer occurs, the assessment in respect of such employment shall, in the absence of an agreement between the respective owners determining the same, be apportionable as nearly as possible in accordance with the proportion of the payroll of the respective periods of ownership or employment.

(2) Notwithstanding subsection (1), in any industry where a change of ownership or employer has occurred and any assessment in respect thereof remains in whole or in part unpaid or a surplus of payment results the Board may levy the whole or any part of such unpaid assessment on either or any of such successive owners or employers, or pay or credit such owners or employers with any surplus as the case may require.

(3) A change in ownership or employer may be deemed to occur where any industry, any part of an industry or a substantial part of its entire assets are sold, leased, transferred, or otherwise disposed of.

(4) A change in ownership shall forthwith be reported to the Board by the former owner and by the successive owner.

(5) If the former owner or subsequent owner does not comply with subsection 4 or if the report is not true or accurate, the former or subsequent owner is liable to pay such additional percentage of assessment as may be fixed by the Board.

(6) Where any questions arise under this section the Board, on application from any person, may determine the fact of a change of ownership or employer and what rights and duties have been acquired or are retained.

(7) The Board may deem subsequent owners or employers in any industry to have assumed the injury cost, injury frequency and injury experience records of previous owners or employers.

116. Whenever the Lieutenant Governor in Council is of opinion that the condition of the compensation fund is such that with the reserves, exclusive of the special reserve, it is not sufficient to meet all the payments to be made in respect of benefits as they become payable and so as not unduly or unfairly to burden the employers in any class or group in future years with payments that are to be made in those years in respect of injuries or deaths that have happened in previous years, he may require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund, and, when such a requirement is made, the Board shall make such supplementary assessment forthwith and it shall be made in like manner as is hereinbefore provided as to other special assessments and all the provisions of this Part as to special assessments apply.

117.-(1) The additional monies necessary to provide for increases of benefits in respect of injuries or deaths previously happening may be levied and collected by the Board from the employers either now, previously or hereafter carrying on industries under this Part in such manner and at such time or times as the Board considers most equitable and most in accordance with the general principles of this Act, and, in the case of Schedule 1 employers, the levy and collection may be by way of addition to the usual assessment or by levy of special or additional assessment or assessments, and, in the case of Schedule 2 employers, by way of additional deposit or capitalized amount as may be necessary to provide for such increases.

(2) Where by reason of limit of legal liability or for other cause the Board considers it inequitable or inexpedient to apply subsection 1 to any benefits, the Board has power to exempt the same accordingly.

118. In order to maintain the compensation fund as provided by section 92, the Board may, from time to time, and as often as may be considered necesary include in any sum to be assessed upon the employers and may collect from them such sums as are considered necessary for that purpose and the sums so collected shall form a reserve fund and shall be invested in any of such securities as a trustee may invest in under the Pension Benefit Act.

119. If an assessment or a special assessment is not paid when it becomes payable, the defaulting employer is liable to pay and shall pay for his default such a percentage upon the amount unpaid as may be prescribed by the regulations or as may be determined by the Board.

120.-(1) Any employer who refuses or neglects to make or transmit any payroll, return or other statement required to be furnished by him under section 102, or who refuses or neglects to pay any assessment or special or supplementary assessment or the provisional amount of any assessment, or any instalment or part thereof, may in addition to any penalty or other liability to which he may be subject, pay to the Board the full amount or capitalized value, as determined by the Board, of the benefits payable in respect of any injury or death to an employee in his employ that happens during the period of such default, and payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(2) The Board, if satisfied that such default was excusable, may in any case relieve such employer in whole or in part from liability under this section.

121. Where default is made in the payment of any assessment or special assessment, or any part of it, the Board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it and the person by whom it was payable, and such certificates or a copy of it certified by the secretary to be a true copy may be filed with the clerk of any county or district court or, where the amount remaining unpaid does not exceed its monetary jurisdictions with the clerk of any small claims court, and when so filed, becomes an order of that court and may be enforced as a judgement of that court against such persons for the amount mentioned in the certificate.

122.-(1) If an assessment or a special assessment, or any part of it, remains unpaid for thirty days or more after it has become payable, the Board, in lieu of or in addition to proceeding as provided by section 121, may issue its certificate stating the name and residence of the defaulting employer, the amount unpaid on the assessment and the establishment in respect of which it is payable, and, upon the delivery of the certificate to the clerk of the municipality in which the establishment is situated, he shall cause the amount so remaining unpaid as stated in the certificate to be entered upon the collector's roll as if it were taxes due by the defaulting employer in respect of such establishment, and it shall be collected in like manner as taxes are levied and collected and the amount, when collected, shall be paid over by the collector to the Board.

(2) The collector is entitled to add 5 percent thereof to the amount to be collected and to retain such percentage for his services in making the collection.

123.(1) Where an employer engages in any of the industries for the time being included in Schedule 1, the Board, if it is of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the Board of a sum sufficient to pay the assessments.

(2) The Board has the like powers and is entitled to the like remedies for enforcing payment of any such sum as it possesses or is entitled to in respect of assessments.

124. In the case of work or service performed by an employer in any of the industries for the time being included in Schedule 1 for which the employer would be entitled to a lien under The Mechanics' Lien Act, it is the duty of the owner as defined by that Act to see that any sum that the employer is liable to contribute to the compensation fund is paid and, if any such owner fails to do so, he is personally liable to pay it to the Board, and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

125.-(1) There shall be included among the debts that are, in the distribution of the assets of a company being wound up, or in case of an assignment or death, to be paid in priority to all other debts the amount of any assessment or benefits the liability wherefore accrued before the date of the assignment or death or before the date of the commencement of the winding up.

(2) The amount set forth in a certificate of the Board filed pursuant to section 121 is a special lien upon all the property, real or personal, of the employer used on or in connection with the industry with respect to which the employer is assessed subject only to municipal taxes and the amount levied under execution upon any such judgement to the extent of the amount due upon such execution shall forthwith be paid to the Board.

## FORMATION OF ASSOCIATIONS AND COMMITTEES

126.-(1) The employers in any of the classes for the time being included in Schedule 1 may, with the approval and under the control of the Board, form themselves into an association for the purpose of education in accident prevention.

(2) If the Board is of opinion that an association so formed sufficiently represents the employers in the industries included in the class, the Board may approve rules of operation and, when approved by the Board and by the Lieutenant Governor in Council, they are binding on all the employers in industries included in the class.

(3) Where an association under the authority of its rules of operation appoints an inspector or an expert for the purpose of education in accident prevention, the Board may pay the whole or any part of the salary or remuneration of such inspector or expert out of the compensation fund or out of that part of it that is at the credit of any one or more of the classes as the Board considers just.

(4) The Board may, in any case that it considers proper, make a grant towards the expenses of any such association.

(5) Any monies paid by the Board under this section shall be charged against the class represented by such association and levied as part of the assessment against such class.

(6) The word "class" in this section includes groups or such part of a class or such number of classes or parts of classes in Schedule 1 as may be approved by the Board.

127.-(1) The employers in any of the classes for the time being included in Schedule 1 may appoint a committee of themselves, consisting of not more than five employers, to watch over their interests in matters to which this Part relates.

(2) The committee may be the medium of communication on the part of the class wtih the Board.

## CONTRIBUTIONS BY EMPLOYERS IN SCHEDULE 2

128. The Board may require an employer who is individually liable to pay benefits to insure his workers and keep them insured against injuries or death in respect of which he may become liable to pay benefits in a company approved by the Board for such amount as the Board may direct and, in default of his doing so, the Board may cause them to be so insured and may recover the expense in the same manner as payment of assessments may be enforced.

129.-(1) Where an employer who is individually liable to pay benefits is insured against his liability to pay benefits, the Board may require the insurance company or other underwriter to pay the sum that under the contract of insurance such company or underwriter would be liable to pay to the employer in respect of an injury to a worker who becomes or whose spouse, children or dependants become entitled to benefits under this Part, directly to the Board in discharge or in discharge pro tanto of benefits to which such worker or his spouse, children or dependants are found to be entitled.

(2) Where a claim for benefits is made in any case to which subsection 1 applies, notice of the claim shall be given to the insurance company or other underwriter and to the employer, and the Board shall determine not only the question of the right of the worker, spouse, children or dependants to benefits but also the question whether the whole or any part of it should be paid directly by the insurance company or other underwriter as provided by subsection 1.

130.-(1) Where benefits are payable by the employer individually, the Board may require the employer to pay to the Board such sum as in its opinion will be sufficient, with the interest thereon, to meet the future payments to be made to the worker, or his spouse, children or dependants, and such sum when paid to the Board shall be invested by it and shall form a fund to meet such future payments.

(2) Instead of requiring the employer to make the payment provided for by subsection 1, the Board may require him to give such security as it considers sufficient for the future payments.

131.-(1) Where the Board considers it requisite for the prompt payment of claims, it may require any employer in Schedule 2 to make deposits of money with it from time to time, out of which it may pay benefits for injuries or death to workers of such employer as they occur.

(2) The deposits in subsection 130(1) and subsection 131(1) shall be invested in any such securities as a trustee may invest in under the Pension Benefit Act.

(3) The Board, where it considers proper, may add to the amount payable by an employer under subsection 1 a percentage or sum for the purpose of raising special funds and the Board may use such monies to meet a loss or relieve any employer in Schedule 2 from all or part of the costs arising from any disaster or other circumstance where, in the opinion of the Board, it is proper to do so.

132. Employers in industries for the time being included in Schedule 2 shall pay to the Board such proportion of the expenses of the Board in the administration of this Part as the Board considers just and determines and the sum payable by them shall be apportioned between such employers and be assessed and levied, and the provisions of this Part as to making such assessments and enforcing payment of the same apply with all necessary modifications to assessments made under the authority of this section.

## OFFENCES AND PENALTIES

133.-(1) Every person, who contravenes or fails to comply with a provision of this Act, or the regulations, or a requirement of the Board or Appeals Tribunal is guilty of an offence and on summary conviction is liable to a fine of not more than $25,000 or to imprisonment for a term of not more than twelve months or to both.

(2) In a prosecution of an offence under any provision of this Act or the regulations, any act or neglect on the part of any manager, agent, representative, officer or director of the accused whether a corporation or not shall be the act or neglect of the accused.

134. This Part applies only to the industries mentioned in Schedule 1 and 2 and to such industries as are added to them under the authority of this Part and to employments therein, and applies to any employment by or under the Crown in right of Ontario, including any employment by any permanent board or commission appointed by the Crown in right of Ontario.

## PART II

135. Sections 136 and 137 apply only to the industries to which Part I does not apply and to the workers employed in such industries, but outworkers and persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, or who are employed in industries under Part I but who are excluded from the benefit of Part I, are not by this section excluded from the benefit of sections 136 and 137.

136.-(1) Where personal injury is caused to a worker by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of his employer or by reason of the negligence of his employer or of any person in the service of his employer acting within the scope of his employment, the worker or, if the injury results in death, the legal personal representative of the worker and any person entitled in case of death have an action against the employer, and, if the action is brought by the worker he is entitled to recover from the employer the damages sustained by the worker by or in consequence of the injury, and, if the action is brought by the legal personal representative of the worker or by or on behalf of persons entitled to damages under the Family Law Reform Act, he or they are entitled to recover such damages as he or they are entitled to under that Act.

(2) Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, buildings or premises, and by reason of any defect in the condition or arrangement of them personal injury is caused to a worker employed by the contractor or by any subcontractor and the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in his service and acting within the scope of his employment, the person for whom the work or that part of the work is done is liable to be sued as if the worker had been employed by him, and for that purpose shall be deemed to be the employer of the worker within the meaning of this Act, but any such contractor or subcontractor is liable to be sued as if this subsection had not been enacted but not so that double damages are recoverable for the same injury.

(3) Nothing in subsection 2 affects any right or liability of the person for whom the work is done and the contractor or subcontractor as between themselves.

(4) A worker shall not by reason only of his continuing in the employment of the employer with knowledge of the defect or negligence that caused his injury, be deemed to have voluntarily incurred the risk of the injury.

137.-(1) A worker shall be deemed not to have undertaken the risks due to the negligence of his fellow workers and contributory negligence on the part of a worker is not a bar to recovery by him or by any person entitled to damages under The Family Law Reform Act in an action for the recovery of damages for an injury sustained by or causing the death of the worker while in the service of his employer for which the employer would otherwise have been liable.

(2) Contributory negligence on the part of the worker shall nevertheless be taken into account in assessing the damages in any such action.

138. Section 131, R.S.O.1980, c.539, is repealed.

# Appendix II: Report of The Wyatt Company

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THE *Wyatt* COMPANY

ACTUARIES-EMPLOYEE BENEFIT CONSULTANTS-RISK MANAGEMENT CONSULTANTS
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TORONTO
VANCOUVER

June 22, 1981

Mr. T.E. Armstrong
Deputy Minister
Ministry of Labour
400 University Avenue
Toronto, Ontario
M7A 1T7

Dear Mr. Armstrong

Workmen's Compensation Board of Ontario

In accordance with your instructions, as outlined in your letter of May 7, 1981, we have made an independent review of an actuarial evaluation of certain proposals made in respect of the Workmen's Compensation Board of Ontario.

Our review and our opinion are presented in this report.

It has been a pleasure to have been appointed to make this review.

Respectfully submitted.

R. Alvin Field

R. Alvin Field, F.C.I.A., F.S.A.
Actuary

L.N. Taylor

L.N. Taylor, F.C.I.A., F.I.A.
Actuary

Nancy A. Yake

Nancy A. Yake, F.C.I.A., F.S.A.
Actuary

# Report to the Ministry of Labour

Concerning

Costs for Compensable Accidents
Pursuant to
"Reshaping Workers' Compensation for Ontario"

June 22, 1981

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II - Recommendations and Proposals not subject to actuarial evaluation.

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IV - Our Review and Opinion.

I - Statement of Actuarial Report subject to our Review and Opinion.

The proposed changes to the structure of Workmen's Compensation in Ontario are made pursuant to Paul C. Weiler's report of November, 1980, entitled "Reshaping Workers' Compensation for Ontario".

The actuarial evaluation of those proposals which is made subject to our review is a report prepared by the Board's Staff Actuary in response to our request, dated June 22, 1981. That report contains a definitive statement of certain proposals presently being made, gives the results of an actuarial evaluation of those proposals and contains an opinion of the Staff Actuary as to those results. For these reasons and since the proposals subject to our review do not correspond precisely to the recommendations and suggested changes contained in Paul C. Weiler's report and in some instances the proposals are new to that report, the report of the Staff Actuary is made an adjunct to our opinion and is attached hereto.

II - Recommendations and Proposals not subject to actuarial evaluation.

Certain emerging characteristics and various proposals which may have an impact on financial costs of compensable accidents have not been brought into the evaluation. These are as follows:

i) Restructuring of the decision-making process with a consequent change in emphasis and in the characteristics of the claims adjudication process.

ii) Employer rating for merit and demerit with a change in the perception of the financial advantages to the employer of safety in the work-place.

iii) Expansion of the rehabilitation and vocational counselling.

iv) The provision of 'bumping' rights to disabled employees and the financial assessment of employers who decline to rehire disabled employees.

v) Devolution of the Board's functions to other agencies or parties, namely medical bills where there is no loss of working time, first day accident coverage and the initial period for lost-time claims, together with the accompanying medical bills.

vi) Emerging characteristics in respect of accident prevention, legislation concerning safety standards in the work place, technological advances in the nature of or provision of medical aid, and compensation for industrial diseases.

vii) Possible changes in the role of tort litigation.

viii) Repeal of Section 127 of the Act, the inclusion of a number of service industries not presently included for compensation coverage and the introduction of liens on employers who terminate operations or leave the province.

We observe that all of these aspects may be considered to have similar effects whether implemented under either the current Act or the proposals. Yet some may be more cost-efficient under the proposed structure of workers' compensation where compensation is formally defined in terms of actual wage-loss.

It should also be noted that the Staff Actuary has not evaluated fringe benefits other than retirement benefits at age 65. If the suggested compensation for these fringe benefits is pursued, there could be an additional cost element in this area, depending upon the final proposals.

III - Limitations on our Review and Opinion.

We have relied fully upon the consulting actuary's opinion as of December 31, 1980 in respect of the appropriateness of the assumptions, methods and data used to calculate the present value of future compensation, pension payments and medical aid under Schedule I on account of accidents that occurred on or before December 31, 1980.

In respect of accidents that are expected to occur in 1981, we have relied upon the methods, assumptions and data used by the Staff Actuary in respect of the preparation of proposed assessment rates for the 1981 calendar year, under the current Act, which methods, assumptions and data were subsequently reviewed and concurred with by Eckler, Brown, Segal and Company Limited.

It follows that we have taken the evaluation of the current Act as at December 31, 1980 as given and we have proceeded to review and audit the methods, assumptions and data used to evaluate the costs of compensable accidents under the stated proposals.

In accordance with your instructions our review is made without reference to financing via the assessment process under either the current Act or under the proposals.

All of the evaluations are made as of December 31, 1980, including, in respect of the proposals, an assumption that the proposals may be introduced on that date as a mature system of compensation. The actual financial effect of introducing the proposals at some later date depends entirely upon the terms of the Act at that time, the application of the proposals to then existing accidents and the capacity of the Board to readily implement those proposals.

From our discussions with the Board we understand that, given an appropriate time period of some six to nine months the Board would be able to establish policy guidelines and criteria for administration and claims adjudication under the proposed system of compensation and that an orderly transition could be readily achieved with this lead time. We have accordingly assumed that such a lead time would be available. In the absence of this lead time, there is a distinct possibility of distortion in the compensation process with significant financial consequences.

Our audit of the actuarial valuations made by the Board has extended as far as possible in the circumstances, so that we have not audited the computer programs or the data source, and have relied upon the statement of the Staff Actuary to that extent. An important element of the work takes into consideration the results of a survey which is still in process of audit and verification. Since the survey was used as a guide in the assessment of wage loss, we consider it reasonable to use the survey without benefit of audit.

Without detracting from the quality of the work performed, the actuarial work is not well documented and we observe that the resources of the Board's Actuarial Department are fully employed in responding to current work loads. There is therefore no clear audit trail which we have been able to follow. We consider it essential that this important work be classified and documented before further work be made in this area.

The evaluation in respect of accidents expected to occur during 1981 may be imputed to accidents in future years insofar as the general nature and extent of current compensable accidents is expected to endure. It is not necessarily appropriate to greatly extend the results into the future, whether under the current Act or under the expected profile of workers' compensation under the proposals, due to the evolution of the industrial process and of the demography of the work-force. Furthermore the extension of the results into the future assumes that current legislated levels of income tax, CPP contributions and UIC premiums will remain approximately stable and also that there is no substantial "wage drift" from wages towards indirect compensation.

Accordingly, the results of the evaluation are limited to the known profile of compensable accidents.

We have reviewed the evaluation of the stated proposals in terms of the whole proposal. Due to the nature of the work, the Staff Actuary has attributed values to the various components of the proposal and we have reviewed and audited the values attributed to each component. We do not give an opinion as to whether the values ascribed to any one item are a sufficient or reliable representation of the financial effect of that item since none of the items stand in their own right.

Our opinion is also limited to the evaluation in respect of Schedule I employers in the aggregate, and our opinion may not be imputed to any particular rate group or employer or to Schedule II.

## IV - Our Review and Opinion.

The evaluation is made in respect of the Schedule I Accident Fund. The financial impact of the proposals upon Schedule II employers has not been computed. The results for Schedule II would have to be obtained and added to the results given in respect of Schedule I in order to obtain industry-wide results.

The evaluation of the proposals has been compared to the costs of compensable accidents under the current Act with allowance for price and wage adjustments after December 31, 1980, as described in the attached report. This reference point is consistent with past experience of amendments to the Act and reflects a maintained role of the Board in the compensation process.

For some purposes it may be useful to compare the costs of compensable accidents under the stated proposals to the current Act, without allowance for price and wage adjustments after December 31, 1980. However, at current levels of price and wage escalation, such a reference point would imply a substantially declining role of the Board in the compensation process.

### OUR OPINION

In our opinion the methods, assumptions and data used to make the actuarial evaluation are adequate and sufficient to the purpose, and the results of that evaluation are reliable and we concur with the opinion of the Staff Actuary as presented in his report, subject to the following comments.

Indexing of Pensions in Course of Payment.

The indexing of pensions in course of payment is evaluated on the assumption that, on average, in the long-term, investment return on invested assets exceeds the adopted price index by 2% per annum. For this purpose it is not significant whether the index is the Consumer Price Index (All Items - Canada) or the Gross National Expenditure Implicit Price Deflator for personal consumption expenditures.

The assumption of a 2% net real rate of return is, in general, acceptable in the context of historical relationships over the long term and also by reference to economic fundamentals.

Nevertheless, the Board, like many fixed-income funds, has not achieved such a net real rate of return over the ten years ending December 31, 1980 or even over the thirty years ending December 31, 1980. This issue does not directly relate to the Board's fixed-income habitat for investment purposes, but reflects the impact of unanticipated increases in the rate of inflation.

The assumption of a 2% net real rate of return constitutes a reasonable expectation but it is exposed to a sequence of unanticipated increases in the rate of inflation. It is not our objective to consider that the unsatisfactory investment outcome for a fund having fixed-income securities is mirrored by a gain to those sectors of the economy which issue such securities. We also think it is not useful to expect that a substantial fund should move out of deteriorating securities in advance of other financial market participants.

We therefore conclude that the desired objective of a 2% real rate of return does impose considerable requirements upon the Board and that the fund should have the broader investment power needed to cope with such requirements. Given this, we consider the assumption to be a sound actuarial assumption for the long term assessment of the proposals.

# COSTS FOR COMPENSABLE ACCIDENTS

Pursuant To

"RESHAPING WORKERS' COMPENSATION FOR ONTARIO"

By: Professor Paul C. Weiler

June 22nd, 1981.

Staff Actuary,
Workmen's Compensation Board
(Ontario)

June 22nd, 1981.

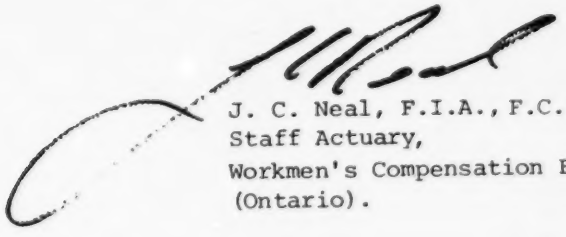
To: The Wyatt Company,
141 Adelaide Street West,
Toronto, Ontario.

Gentlemen:

As requested, I have made a report on the costs of compensable accidents pursuant to "Reshaping Workers' Compensation for Ontario".

My report contains a statement of methods and assumptions used to make the actuarial evaluations of certain proposals which are described herein.

Yours truly,



J. C. Neal, F.I.A., F.C.I.A.,
Staff Actuary,
Workmen's Compensation Board
(Ontario).

STATEMENT OF THE STAFF ACTUARY

This statement is in respect of my actuarial evaluation made as at December 31, 1980 of the costs associated with compensable accidents covered under Ontario Workers' Compensation under the present programme and under a reshaped programme based upon the principles enunciated in Paul Weiler's Report "Reshaping Workers' Compensation for Ontario" as if it had been operating as a mature programme on January 1, 1981.

For the existing programme I have evaluated costs under the current legislation, and also the costs of continuing the current practice of amending the legislation on a fairly regular basis so as to provide annual inflation adjustments. For the reshaped programme I evaluated a set of proposals, as described in this report, based upon the principles advocated by Paul Weiler. In this regard, I have also assumed that the legislation will permit the Board to continue to obtain verifiable wages and that guidelines relating to deemed wages will be consistent with those currently in use for Section 42(5) pension supplements.

The actuarial methods, assumptions and data used to evaluate these proposals are, where applicable, the actuarial methods, assumptions and data used to prepare our 1981 assessment rates and December 31, 1980 financial statements. Where new actuarial assumptions, methods and data were required, they are consistent with the above and are, in my opinion, adequate and sufficient for the purpose of this evaluation.

In my opinion, which includes the foregoing comments, the costs of compensable accidents under the proposed reshaped programme outlined in this report compare to the current Act, with allowance for annual inflation adjustments, as follows:--

i) the costs in respect of compensable accidents expected to be incurred in 1981 are substantially of the same order;

ii) the relative costs of 1981 accidents may be inputed to accidents expected to be incurred in the years following 1981 although the potential for divergence due to numerable factors increases as one goes further into the future;

iii) the costs in respect of accidents incurred prior to January 1, 1981 are reduced by the implementation of the reshaped programme.

June 22nd, 1981.

J. C. Neal, F.I.A., F.C.I.A.,
Staff Actuary,
Workmen's Compensation Board,
Ontario.

Continued.....2

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Continued.....3.

## II -- PROCEDURE USED FOR EVALUATION

The procedure used for our evaluation was to proceed from existing evaluations of the costs of compensable accidents under the current act, through to the entire reshaped programme with the step by step results being recorded in Exhibits.

### (A) Current Act

The values shown in Column (1) of Exhibit "A" were prepared for the Board's December 31, 1980 financial statements and have been approved by Eckler, Brown, Segal and Company Limited.

The values shown in Column (1) of Exhibit "B" were prepared in order to establish the Board's Proposed 1981 assessment rates, were supported by Eckler, Brown, Segal and Company Limited, and were subsequently adopted.

### (B) Current Act, with Annual Inflation Adjustments

Values shown in Column (2) of each Exhibit reflect an assumption that future pension payments will be adjusted annually to allow for price increases and that minimum and maximum provisions will be adjusted annually to allow for changes in wage levels so as to follow the practice established in each of the four amendments to the Act in the period 1974 to 1979. In addition, with regard to 1981 compensable accidents only, allowance was also made for adjustments for the eighteen month period from the effective date (July 1, 1979) of the last amendment to January 1, 1981.

### (C) Reshaped Programme

The values in Column (10) show the costs of a reshaped programme, whereas the values shown in Columns (3) to (9) of each Exhibit show the incremental costs associated with the various elements.

Continued.....4.

(C) Reshaped Programme - Cont'd.

The values in Columns (3) to (8) attribute costs to each item where each item's cost is dependent upon which items have previously been evaluated. Correspondingly, the elimination or modification of any one item will alter the financial effect of other items so that any changes in one or more items will necessitate a re-evaluation of all items and of the entire proposal.

Exhibit "A" gives the results of the evaluation of all existing Schedule 1 accidents incurred up to December 31, 1980 and Exhibit "B" similarly gives the results of the evaluation of 1981 Schedule 1 compensable accidents.

Continued.....5.

## III -- DESCRIPTION OF PROPOSALS MADE SUBJECT TO EVALUATION

### 1. Maximum Earnings of 250% of Average Industrial Wage (Ontario)

The proposal to increase maximum average earnings to 250% of the average industrial wage for Ontario is determined to give a maximum of $40,000 in 1981. Consistent with prior practice, each year's maximum is assumed to apply to accidents occurring in the year and to temporary compensation based upon recurrences occurring in the year.

### 2. Wage Loss

Under this proposal the current system of awarding permanently disabled claimants with a pension based upon impairment of earning capacity is replaced with payments based upon wage loss where current wages include deemed income to those workers who do not take work that is both suitable and available.

In addition, we have, for 1981 claims, included under this provision a conversion of survivor benefits from the current flat amounts to amounts related to earnings and dependent upon criteria such as age and the presence of children. For existing compensable accidents we have left survivor benefits as flat benefits with annual inflation adjustment.

### 3. C.P.P. Offset

Under this proposal, the current Plan's lack of recognition of C.P.P. benefits to both permanently disabled workers and survivors is rectified via the inclusion of an offset for C.P.P., with one exception in that there is no C.P.P. offset for survivor benefits re existing compensable accidents, as these are not assumed to convert to the earnings-related formulae.

### 4. 90% Net

Under this proposal, total disability benefits will be converted to 90% of net wages where, on an annual basis, net wages are set at:--

Continued.....6.

4. 90% Net - Cont'd.

(a) Gross Wage

LESS

(b) Federal + Provincial Taxes re (a)*

LESS

(c) Employee C.P.P. contributions

LESS

(d) Employee U.I.C. contributions.

* Computation of taxes include allowance for the claimant's family members, all of whom are assumed to give rise to the exemption available for family members with a zero net income even though such a generous approach may not, in fact, be adopted.

For permanent partial disability the same approach has been taken except that the 90% is applied to:--

(a) the net of the adjusted pre-accident gross average wage

L E S S

(b) the net of the current actual/deemed gross average wage.

For surviving spouses re 1981 claims, the same approach has been taken as for total disability, except that the 90% is replaced with 75% where there are no dependent children.

In addition it is at this point that allowance is made for the setting of minimums at 50% of the average industrial wage for Ontario.

5. Retirement Benefits

Under this proposal the annual benefits available from age 65 are assumed to be 1/40th of adjusted benefits received (excluding any lump sum from 6) between the first anniversary of the claimant's accident and attainment of age 65.

Continued.....7

5. Retirement Benefits - Cont'd.

In this regard, an adjusted benefit equals:--

(a) Actual benefit received;

TIMES

(b) The product of each of the inflation adjustment factors used in each of the years following the year of payment.

In this way the claimant will receive the equivalent of the benefits provided by the most generous registered pension plans allowed under Canadian Legislation, i.e., the 2% Final Average Earnings plans with annual post-retirement adjustments and no offset for C.P.P. Thus, this proposal not only makes up for all lost C.P.P. retirement income, but also matches the most generous benefit available from registered pension plans.

6. Lump Sums

Under this proposal lump sums, based upon the Maximum Earnings at date of payment, will be paid to permanently disabled workers and surviving spouses/orphans. For the permanently disabled the lump sum will be the Maximum Earnings times disability rating, or increase in rating for re-evaluations, times an age factor (using the age of the worker at date of payment). The age factor is 1.50 at age 15 or under and then reduces by 0.02 for each year until age 65 when it becomes 0.50 for age 65 and over. For survivors the lump sum will be the Maximum Earnings times the same age factor (using the age of the surviving spouse at date of death). However, where the worker had already received a permanent disability lump sum the survivors lump sum is also multiplied by one minus the disability rating.

7. Preservation of Existing Entitlement

This proposal resolves the problem that for pre conversion compensable accidents there are circumstances where the preceding proposals will reduce the new benefit below the amount available under the current Act. Specifically, where any benefit payable to a permanently disabled claimant under the new programme is less than that available under the current Act, without allowance for future inflation adjustments, the benefits under the current Act will be paid as long as the accident under which the payment is due occurred prior to 1981.

Continued.....8.

8. Fringe Benefits (Other Than Retirement Benefits)

Due to the uncertainty as to how fringe benefits will be compensated for and the fact that the current suggestion is that the employer will be required to maintain fringe benefits for a certain period (as many of them do even now) the fringe benefit proposal has been excluded.

Continued.....9.

## IV -- ACTUARIAL ASSUMPTIONS

### (A) Current Act

a1) Investment income from the accident fund will, on the average, equal 8.5% per annum.

a2) Wages and recurrence wages will increase at 8% per annum.

a3) All fees, per diems, drugs, et cetera, that are covered by medical aid will increase in cost at the rate of 8% per annum.

a4) Future entitlement to benefits will equal the average experience during the period 1975 to 1979.

a5) Future rates of mortality and remarriage will equal the rates experienced over the five years 1972-1976.

### (B) Inflation and Wage Adjustments

b1) Inflation adjustments will be 6½% per annum.

b2) Consistent with a2), minimums and maximums will increase at 8% per annum.

### (C) Reshaped Programme

c1) "Wage loss" provisions, if based upon 75% of lost wages, will cost the same as the current "impairment of earning capacity" provision.

Continued.....10.

(C) Reshaped Programme - Cont'd.

c2) Offsets for C.P.P. were set upon a general rationalization of their impact due to the non-availability of adequate and sufficient data.

c3) 100% disability benefits based upon 90% net will cost 98% of those based upon 75% gross.

c4) Wage loss benefits based upon 90% net will cost 85% of those based upon 75% gross for new claims and 87% for pre-conversion claims (i.e., the impact of the lower maximum).

c5) Annual retirement benefits of 1/40th of the total pre-retirement wage loss benefit, with allowance for inflation adjustments, will result in an average reduction of benefits at age 65 of 50%.

c6) The value of permanent disability benefits payable due to the preservation of existing benefits re pre 1981 claims, is 40% of the total value of permanent disability benefits under the current Plan without annual inflation adjustments.

Continued.....11.

## V -- METHODS USED TO ESTABLISH THE ADDITIONAL ACTUARIAL ASSUMPTIONS REQUIRED FOR THE RESHAPED PROGRAMME

### (A) Wage Loss Benefits

Due to the fact that no evaluation of permanently disabled claimants' wage losses is required under the existing programme, existing data could not be used to evaluate this proposal. As a result, we instigated a survey of claimants being evaluated for permanent disability and prepared various analyses of the resulting data including a careful review of the expected bias caused by the exclusion of data for various reasons.

In addition, it was decided to exclude all claimants unemployed at the time of survey due to the fact that the computation of deemed wages cannot be performed by Claims' Staff until suitable guidelines have been prepared. (At time of writing it appears that guidelines that follow those used for the current programme's pension supplements under Section 42(5) would result in wage loss benefits to the unemployed at levels comparable to those for employed.)

The final step in cleaning the data was to recognize that for each case about to receive a commuted award who is not eligible for a 42(5) pension supplement, that deemed wage guidelines would likely provide wage loss benefits, on the average at or below the claimant's impairment of earnings capacity. Thus, for these cases their current wage was reset so as to set the wage loss benefit, if based upon 75% gross, equal to the impairment of earnings benefit.

As a result, the cleaned data produced ratios of wage loss benefits versus impairment of earnings pension of 1.04 which was then used to establish the assumption of equal costs under either option.

This result, however, only applies to new claims due to the fact that, in preparing the results, we adjusted pre-accident wages via the ratio:--

$$\frac{\text{Average Industrial Wage in Ontario for 1980}}{\text{Average Industrial Wage in Ontario for Year of Accident}}$$

and then applied a ceiling of $40,000 to both the adjusted pre-accident wage and the current wage.

Continued.....12.

(C) Reshaped Programme - Cont'd.

c2) Offsets for C.P.P. were set upon a general rationalization of their impact due to the non-availability of adequate and sufficient data.

c3) 100% disability benefits based upon 90% net will cost 98% of those based upon 75% gross.

c4) Wage loss benefits based upon 90% net will cost 85% of those based upon 75% gross for new claims and 87% for pre-conversion claims (i.e., the impact of the lower maximum).

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Continued.....11.

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The final step in cleaning the data was to recognize that for each case about to receive a commuted award who is not eligible for a 42(5) pension supplement, that deemed wage guidelines would likely provide wage loss benefits, on the average at or below the claimant's impairment of earnings capacity. Thus, for these cases their current wage was reset so as to set the wage loss benefit, if based upon 75% gross, equal to the impairment of earnings benefit.

As a result, the cleaned data produced ratios of wage loss benefits versus impairment of earnings pension of 1.04 which was then used to establish the assumption of equal costs under either option.

This result, however, only applies to new claims due to the fact that, in preparing the results, we adjusted pre-accident wages via the ratio:--

$$\frac{\text{Average Industrial Wage in Ontario for 1980}}{\text{Average Industrial Wage in Ontario for Year of Accident}}$$

and then applied a ceiling of $40,000 to both the adjusted pre-accident wage and the current wage.

Continued.....12.

(A) Wage Loss Benefits - Cont'd.

For existing claims it could be suggested that this be repeated except that the pension increase factors should replace the wage index and the $40,000 ceiling be replaced with $18,500 and, for existing pensions, that commuted cases be excluded.

Such treatment, however, would be quite harsh on higher paid workers and is not, therefore, assumed likely to occur. Thus, although the actual provision will likely not result in wage loss benefits equalling impairment of earnings capacity benefits, until such time as this issue is clarified, it is prudent to assume that they will.

(B) Offsets for C.P.P.

C.P.P. offsets re permanent disability benefits requires a somewhat arbitrary assessment due to a lack of data and a lack of guidelines for determining if a claimant's C.P.P. disability pension should be recognized. Thus, we have assumed that the assumption obtained for wage loss under (A) includes provision for a C.P.P. offset and that the programme's permanent disability cost increases by 4% if the C.P.P. offset were not present.

For survivor benefits, the situation is much clearer as, subject to eligibility rules related to C.P.P. contributions, all beneficiaries are entitled to C.P.P. benefits. Thus, after allowing for such items as benefit maximums, a C.P.P. offset reduces survivor benefits by 20%.

(C) 90% Net

With regard a claimant's personal exemptions, no information is required under the current programme. This time, however, the availability of 1977 Taxation Statistics as prepared by Revenue Canada Taxation, together with our own information as to the proportions of claimants whose pre-accident wages fall into various salary bands, negated the need for a further survey.

Continued.....13.

(C) 90% Net - Cont'd.

Thus, we were able to take a block of claims and distribute them by personal exemption group and salary band. From this we were able to compute benefits for temporary total disability based upon 75% gross and 90% net and found:--

| | | | Ratio |
|---|---|---|---|
| 90% Net | (1) | No Minimum | 95.3% |
| | (2) | Minimum of 50% of Average Wage | 96.8% |
| | (3) | As for (2) with all Singles treated as Married. | 99.6% |

and concluded that if all spouses are treated as eligible for the maximum married exemption, then 90% net will produce payments equal to 98% of 75% gross.

With regards permanent disability, a further 13% reduction, as supported by an analysis of the cleaned survey data, is needed to allow for marginal tax rates versus average tax rates. Thus, 90% net wage loss benefit cost 85% of 75% gross wage loss benefits.

(D) Retirement Benefits

An analysis of new permanent disability awards made during 1980 shows the average age of award, weighted by amount of pension, was 47 and thus an assumption that the average claimant will incur a 50% reduction in benefit at age 65 is appropriate. It was also found from an evaluation of all 1980 awards that the reduction in liability re the reduction in post age 65 benefit set on a per case basis exceeds that obtained by the average technique, due to interes rate skews. However, the change is not large and we have thus retained the modest understatement of savings by adopting the 50% for every one assumption.

Continued.....14

(E) Minimum Guarantee re Pre Conversion Claims

Obviously this is a most difficult item to cost. In particular, the reshaped programme's relationship to the current programme re wage loss has been simplified re pre 1981 adjustments to wages (i.e., the more generous wage index replaces the more probable prior amendment adjustment factors).

Thus, although the cleaned data suggests the minimum guarantee be set at 42% of the existing Plan's no adjustment permanent disability liability, I believe this to be an overstatement because:

a) Although inflation in the long run is assumed to decline, it will not do so rapidly. Thus, the wage loss benefits will produce better relative benefits in the short term than our 6½% per annum inflation assumption produces.

b) The exclusion of the unemployed has tended to overstate those cases with no wage losses and high wage losses versus more average situations.

Thus, in the Exhibits an assumption that this item costs approximately 40% of the existing Plan's no adjustment permanent disability liability has been adopted, that the result be rounded and a caution be given as to its approximate nature.

Continued.....15.

E X H I B I T S

Contipued.....16.

## VI -- NOTES TO THE FOLLOWING EXHIBITS

These notes are an integral part of Exhibit "A" and Exhibit "B".

a) that each Column takes the process of moving from the current statutes to those proposed one step at a time and that the lower half of the table shows the additional cost or savings of adding the specific proposals;

b) that the cost of any individual proposal is, in part, dependent upon its position within the table although, of course, the cost ot the total programme is independent of the sequence chosen;

c) that elimination or change in any proposal will often have such an impact upon other proposals that, unfortunately, any change in the overall programme requires a re-evaluation of the entire package;

d) that the proposals are assumed to be implemented with an effective date of January 1, 1981;

e) that due to the partially subjective nature of benefit entitlement under any Workers' Compensation programme, the apparent degree of precision in the tables exceeds what is justified but is needed in order to avoid difficulties with rounding and distortion in the costs of specific proposals;

f) that the definition of what is included under each of the Columns is covered under Section III of the report;

g) that Schedule 2 claims, that tend to account for 10% of all the current Programme's benefit payments, are not included as they do not form part of the Board's liabilities.

**Continued..... 17.**

## COST ESTIMATES FOR EXISTING SCHEDULE 1 CLAIMS @ DECEMBER 31, 1980.

($ Millions)

| | CURRENT ACT | | INCREMENTAL COST OF NEW PROVISIONS | | | | | | | NEW ACT |
|---|---|---|---|---|---|---|---|---|---|---|
| | No Allowance For Future Benefit Increases (1) | Allowing For Future Benefit Increases (2) | $40,000 Ceiling (3) | Wage Loss (4) | C.P.P. Offset (5) | 90% Net (6) | Retirement Benefits (7) | Preservation of Existing Entitlements (8) | Net Cost (9) | (10) |
| A) Temporary | 387 | 529 | 78 | 0 | 0 | -12 | 0 | 0 | 66 | 595 |
| B) Permanent | 1243 | 2593 | 0 | 103 | -103 | -337 | -488 | 500** | -325 | 2268 |
| C) Survivor | 228 | 441 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 441 |
| D) Medical Aid | 227 | 227 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 227 |
| TOTAL | 2085 | 3790 | 78 | 103 | -103 | -349 | -488 | 500 | -259 | 3531 |

* The removal or change of any one item will change the costs of the remaining items.

** This cost should only be taken as a guideline.

THE PRECEDING NOTES FORM AN INTEGRAL PART OF THIS EXHIBIT.

June 22nd, 1981.

## COST ESTIMATES OF SCHEDULE 1 1981 COMPENSABLE ACCIDENTS

($ Millions)

| | Current Act | | Incremental Cost of New Provisions* | | | | | | | NEW ACT |
|---|---|---|---|---|---|---|---|---|---|---|
| | Assuming no Allowance For Future Benefit/ Ceiling Increases | Assuming Allowance For Future Benefit and Ceiling Increases; Ceiling of $21,200 as of Jan. 1, 1981 | Ceiling to $40,000 | Wage Loss Criterion | C.P.P. Offset | 90% Net | Retirement Benefits | Lump Sum Payment | Net Cost | |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| A) Temporary | 215 | 250 | 29 | 0 | 0 | -6 | 0 | 0 | 23 | 273 |
| B) Permanent | 113 | 254 | 16 | 10 | -10 | -40 | -45 | 56 | -13 | 241 |
| C) Survivor | 12 | 30 | 0 | 20 | -10 | -1 | -8 | 11 | 12 | 42 |
| D) Medical Aid | 86 | 86 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 86 |
| | 426 | 620 | 45 | 30 | -20 | -47 | -53 | 67 | 22 | 642 |

* The removal or change of any one item will change the costs of the remaining items.

THE PRECEDING NOTES FORM AN INTEGRAL PART OF THIS EXHIBIT.

June 22nd, 1981.

POOR

QUALITY

ORIGINAL